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# TRAINING AND RESEARCH: UNITED NATIONS INSTITUTE FOR TRAINING AND RESEARCH

## Report of the Secretary-General

1. The present report has been prepared in compliance with General Assembly resolution 47/227 of 8 April 1993 concerning the United Nations Institute for Training and Research (UNITAR). In that resolution, the General Assembly, inter alia, requested the Secretary-General to submit a report to the Assembly at its forty-eighth session on the arrangements mentioned in the resolution.

2. In accordance with paragraph 1 of resolution 47/227, the UNITAR building has been transferred to the United Nations in return for the cancellation of the debt of the Institute and coverage of its financial obligations for 1992. The building has 22,500 square feet of office space, including five floors of 4,000 square feet each, and a basement of 2,500 square feet. Office and meeting facilities for non-governmental organizations occupy the first floor and a portion of the basement. The other floors have been assigned to the Department of Peace-keeping Operations, 60 staff members of which are thus accommodated.

3. In exchange for the transfer of the building of the United Nations, the General Assembly determined that the debt of the Institute to the United Nations should be cancelled and its obligation for 1992 covered. At 31 December 1992, the amount involved, that is, the value at which the building was taken up in the accounts of the United Nations, was $10,678,482.

4. The decision to transfer UNITAR to Geneva was taken following the adoption on 8 April 1993 of General Assembly resolution 47/227. The Assembly, recognizing that there would be costs involved in New York subsequent to 31 December 1992, had adopted section XXIV of resolution 47/219 on 23 December 1992, which the Secretary-General was authorized to commit funds by advances from the Working Capital Fund, not to exceed $400,000, to cover certain costs of the UNITAR New York office in 1993. On the recommendation of the Fifth Committee (see A/47/914), the General Assembly in passing resolution 47/227 decided to authorize the Secretary-General to enter into a commitment of an additional $200,000 to cover the requirements of UNITAR until June 1993.

5. The headquarters of UNITAR has been transferred to Geneva, effective 1 July 1993. The Institute operates from the location already available to its Geneva-based operations in the United Nations-rented building of Petit Saconnex. Total staff now include 14 Professionals (of whom 12 are charged against special-purpose grants); 9 General Service (of whom 6 are also charged against special-purpose grants); 2 consultants; 7 special fellows in residence; and 4 interns, remunerated through university exchange programmes. The Board of Trustees of the Institute, whose new members have been appointed by the Secretary-General, is expected to meet at Geneva before the end of 1993.

6. In paragraph 2 of its resolution 47/227, the General Assembly requested the Secretary-General to designate a liaison officer to organize and coordinate the existing training programmes and research activities relating to training in New York, within existing resources. The Secretary-General designated the Chief of the Training Service, Office of Human Resources Management, Department of Administration and Management, as the focal point to ensure a smooth transition for the organizational arrangements of UNITAR and to coordinate the remaining New York-based training programmes, as indicated below.

7. Taking into account the debate held in the Second Committee at the forty-seventh session of the General Assembly, the Secretary-General shares the widely expressed view that the training programmes in multilateral diplomacy undertaken by UNITAR in New York have served a useful purpose for a large number of Member States. In that regard, the Secretary-General had already confirmed to the Second Committee in 1992 that those training programmes could be organized and coordinated by the relevant departments of the United Nations Secretariat (see A/C.2/47/L.94, para. 11).

8. Accordingly, arrangements have been made to continue those programmes in New York under the auspices of the United Nations. In August 1993, a letter was sent to the heads of all permanent missions inviting them to nominate members of their delegations to attend one or more of the briefings for new delegates to the forty-eighth session of the General Assembly. The programme, which was held from 20 to 24 September, consisted of the following three briefings:

(a) Special briefing on peace-keeping issues, attended by 104 delegates from 50 countries;

(b) General briefing on the work of the forty-eighth session of the Assembly, attended by 186 delegates from 73 countries;

(c) Special briefing on the work of the Fifth Committee of the Assembly, attended by 58 delegates from 42 countries.

9. The Department of Public Information provided the institutional umbrella for the orientation briefings, while the Training Service of the Office of Human Resources Management provided technical and administrative services. Marginal costs related to the programmes were absorbed by the United Nations departments involved. The senior fellow previously in charge of the training programme for permanent missions continued to conduct the briefings. There are no costs relating to the contribution of senior fellows.

10. Replies by the participants to the evaluation questionnaires indicate that the programmes were well received and found useful. The replies also denote a need for expanding the training programmes for mission staff in New York on critical issues relating to the activities of the United Nations, especially in the field of peace-keeping. It is the intention of the Secretary-General to continue the training programme in multilateral diplomacy for permanent missions in New York, and to expand it subject to the availability of voluntary contributions for that purpose.

11. Several training programmes were held at the specific request of Member States or members of other organs of the United Nations system, as referred to in paragraph 5 of resolution 47/227. In compliance with Economic and Social Council resolutions 1991/70 and 1992/67, and with reiterated requests from the Geneva Diplomatic Committee, UNITAR prepared and organized a training programme on computer literacy and access to United Nations information systems, at Geneva, for diplomats and staff members of the United Nations system. The participants had to bear their own costs, but UNITAR established a scholarship fund for diplomats from developing countries. The International Telecommunication Union (ITU) made its training laboratories available. In addition, the Office of Legal Affairs of the Secretariat entrusted UNITAR with the design and organization of the Fellowship Programme in International Law at The Hague. Following a similar format, the United Nations Environment Programme (UNEP) requested UNITAR to organize jointly a Fellowship Programme on Environmental Law and Policy, due to be held in December 1993 at Nairobi. Further to the proposal made during the debate at the forty-seventh session of the General Assembly and with the assistance of various States and private foundations, UNITAR designed and conducted a Fellowship Programme in Peacemaking and Preventive Diplomacy. In response to numerous requests, UNITAR has prepared, in collaboration with the interim secretariat of the United Nations Framework Convention on Climate Change, a rather comprehensive information and training programme to promote the implementation of the Convention. Over the last 15 months the United Nations Development Programme (UNDP) has requested UNITAR to design and organize various training programmes, in particular in the management of foreign affairs, for newly independent countries and countries in transition. UNITAR has also organized programmes at the specific request of non-governmental institutions, including the International Academy for Environment, Geneva, the International Institute for Public Administration, Paris, and the Foundation for Advanced Studies in International Development, Tokyo.

12. In paragraph 3 of its resolution 47/227, the General Assembly decided that, as at 1 January 1993, the funding of all the administrative budget and the training programme of the Institute should be covered from voluntary contributions, donations, special-purpose grants and executing agency overheads. In the nine months ended 30 September 1993, UNITAR had received government contributions totalling $262,800. Miscellaneous income amounted to $166,400, resulting in total available resources of $429,200. Expenditures against that total amounted to $417,200 as at the end of September. UNITAR projects that an additional $130,000 will be received before the end of 1993, which will be sufficient to cover estimated costs until 31 December 1993. Thus, the financial situation remains very tight and fragile. Unless UNITAR is able to mobilize significant government contributions and other income in the biennium 1994-1995, there is serious danger of further financial difficulty.

13. In accordance with paragraphs 6 and 8 of resolution 47/227, UNITAR has developed its contacts with multilateral and regional governmental organizations, bilateral cooperation agencies, foundations, institutes and universities in both developing and developed countries. As a matter of principle, the new policy is to offer the services of UNITAR in the field of training to the lead bodies of the organization and lead agencies of the United Nations system. The same applied to regional organizations, be they intergovernmental (the European Community (EEC), the Inter-American Development Bank (IDB), the Regional Training Centre for Agrometeorology and Operational Hydrology and their Applications (AGRHYMET) and the Agence de coopération culturelle et technique (ACCT)) or private (International Group of National Associations of Manufacturers of Agrochemical Products, or the International Council of Chemical Associations and the International Organization of Civil Protection). Training institutes, foundations and development cooperation agencies in developing and industrialized countries enjoy close working relations with UNITAR in the field of environmental management, management of foreign affairs and disaster preparedness. Obviously, the content of the training programmes is decided in cooperation with substantive units of development cooperation agencies from the donor and recipient countries. Efforts are being made to coordinate programme activities between UNITAR and the International Training Centre of the International Labour Organization (ILO), at Turin, Italy.

14. In this context, the Secretary-General is deeply concerned with the need to enhance the capacity of the United Nations system to respond to the increasing training requirements at both the international and national levels, and fully agrees with the emphasis placed in paragraph 7 of the resolution on the strengthening of cooperation with existing institutions, particularly the International Training Centre of ILO. The development of an effective world-wide training capacity for staff, for nationals of Member States closely involved in United Nations-related work and for diplomatic missions is a prerequisite for enhancing the effectiveness of the activities of the United Nations in the fields of development, peace-keeping and humanitarian assistance. Existing mechanisms, such as the Training Subcommittee of the Consultative Committee on Administrative Questions and the Consultative Committee on Programme and Operational Questions, are now establishing inter-agency linkages to coordinate training activities in a more effective manner. The Field Coordination Management Programme implemented under the aegis of the Consultative Committee on Programme and Operational Questions is particularly relevant in that context. The coordination workshops for senior United Nations system field representatives, organized under the guidance of that Committee by the International Training Centre of ILO are a successful example of how training can be utilized as part of a comprehensive strategy aimed at improving the coherence and effectiveness of United Nations system operations at the field level. Systematic work was also initiated in July 1993 by a joint United Nations/ILO task force appointed by the Secretary-General of the United Nations and the Director-General of ILO to explore the better use of the International Training Centre at Turin for the benefit of the training programmes of the two organizations.

15. In reaffirming that UNITAR should focus on providing training programmes and research activities relating to training, in paragraph 7 of its resolution 47/227 the General Assembly emphasized the importance of enhancing the research

capacity of the system as a whole. In accordance with that resolution and with paragraph 2 (a) of General Assembly resolution 46/180 of 19 December 1991, UNITAR no longer performs functions of research and study. That development has been taken into account in the formulation of the proposals for the restructuring of the economic and social sectors of the Organization, which were acted on by the General Assembly in its resolution 47/212 B of 6 May 1993. It is also being borne in mind in pursuing action at the inter-agency level to ensure that the research capacity of the system is strengthened and that the system is intellectually equipped to respond effectively to the challenges ahead, in a rapidly changing world situation. Thus, for example, the reinforcement of the capacity of the Organization in the field of economic and social information and policy analysis was one of the underlying objectives of the new structures established at Headquarters. Enhancing the impact of research and analysis activities and mutual feedback between them and operational activities was also a major concern in the restructuring and consolidation of the subsidiary machinery of the Administrative Committee on Coordination. The Secretary-General intends to keep the matter under constant review.

16. Paragraph 7 of resolution 47/227 refers specifically to the role of the United Nations University (UNU). During his visit to UNU headquarters in February 1993, the Secretary-General stressed that:

> "The University must become a reservoir of ideas, a source of information and understanding available to the United Nations in its entirety. It is imperative that existing linkages be strengthened and, more importantly, utilized."

17. It is in that spirit that UNU is reorganizing its programme priorities. In its programme budget for the biennium 1994-1995, greater emphasis is being placed on strengthening the academic contributions of the University to policy questions that now need to be addressed by the United Nations, with particular attention to matters pertaining to the "Agenda for Peace" (A/47/277-S/24111) and Agenda 21. The purpose of those new activities is to generate policy-oriented research findings that would be of relevance to the United Nations in enhancing the effectiveness of its action. Plans are also under way for an intensification of the research activities of UNU, directly benefiting entities of the United Nations system or directly related to their activities.

18. As can be inferred from the above, the main provisions of General Assembly resolution 47/227 have been implemented. However, with regard to the provision contained in paragraph 3 of that resolution that the funding of all the administrative budget and the training programmes of the Institute should be covered from voluntary contributions, donations, special-purpose grants and executing agency overheads, the financial situation of the Institute remains fragile, as indicated in paragraph 12 above. The response by the international community to the invitation by the General Assembly to make voluntary contributions to the restructured Institute, in particular to its General Fund, so as to assure its viability will, in this regard, be a determining factor for the future implementation of resolution 47/227.

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# HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS QUESTIONS, INCLUDING ALTERNATIVE APPROACHES FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

## Human rights in the administration of justice

## Report of the Secretary-General

CONTENTS


| | | Paragraphs | Page |
|---|---|---|---|
| I. | INTRODUCTION | 1 | 3 |
| II. | ADVISORY SERVICES AND TECHNICAL ASSISTANCE | 2 - 26 | 3 |
| | A. Professional training in human rights in the administration of justice | 3 - 20 | 4 |
| | B. Human rights fellowship programme | 21 | 10 |
| | C. Advisory services for the administration of justice | 22 - 25 | 10 |
| | D. Assessment of needs for the administration of justice | 26 | 11 |
| III. | ACTIVITIES OF UNITED NATIONS BODIES | 27 - 48 | 11 |
| | A. Commission on Human Rights | 28 - 41 | 11 |
| | B. Subcommission on Prevention of Discrimination and Protection of Minorities | 42 - 48 | 15 |
| IV. | DISSEMINATION OF RELEVANT INTERNATIONAL INSTRUMENTS | 49 - 50 | 17 |

CONTENTS (continued)

| | | Paragraphs | Page |
|---|---|---|---|
| V. | COORDINATION OF ACTIVITIES ..... | 51 - 56 | 17 |
| VI. | CONCLUSIONS ..... | 57 - 58 | 18 |
| Annex. | List of instruments relevant to human rights in the administration of justice ..... | | 20 |

# I. INTRODUCTION

1. The General Assembly, at its forty-sixth session, adopted resolution 46/120 of 17 December 1991, entitled "Human rights in the administration of justice", in which, inter alia, it requested the Secretary-General: to continue to assist Member States, at their request, in implementing existing international human rights standards in the administration of justice, in particular under the programme of advisory services of the Centre for Human Rights; to continue to provide all necessary support to United Nations bodies working on the promotion and protection of human rights and on international standard-setting in this field; to ensure the widest possible dissemination of the international instruments and to include such texts in the next edition of the United Nations publication entitled Human Rights: A Compilation of International Instruments; and to continue to coordinate activities in that field, including the various technical advisory services carried out by the Centre for Human Rights and the Centre for Social Development and Humanitarian Affairs of the Secretariat, with a view to undertaking joint programmes and strengthening existing mechanisms. The General Assembly also requested the Secretary-General to report at its forty-eighth session on the implementation of that resolution.

# II. ADVISORY SERVICES AND TECHNICAL ASSISTANCE

2. The report of the Secretary-General to the Commission on Human Rights at its forty-ninth session on advisory services in the field of human rights 1/ contained a number of items relating to advisory services and technical cooperation in the area of human rights in the administration of justice. Among them were advisory services of experts, fellowships, seminars and training courses provided to several requesting Member States, the direct beneficiaries of which included judges, lawyers, prosecutors, police, prison officials and military officers. In particular, in 1992 the programme provided: fellowships for applicants from 32 countries to attend a training course which included subjects relating to human rights in the administration of justice; translation and information efforts related to international instruments on human rights in the administration of justice for Cambodia and a number of other countries; expert needs assessment regarding, inter alia, human rights in the administration of justice in Benin, Cambodia, Colombia, Mongolia and Sao Tome and Principe; training in human rights and the administration of justice to Albania, Mongolia, Romania, Swaziland and Uruguay; expert advisory services on human rights in the administration of justice (states of emergency) to the Russian Federation; and support for regional activities related to this subject, including for training conducted by the Arab Institute of Human Rights, an African regional seminar in Benin and a regional training course for English-speaking African countries held at San Remo, Italy. Since the publication of that report, a number of other activities supporting human rights in the administration of justice have been carried out by the Centre. They are described below, along with more detailed information on those set out above.

A. Professional training in human rights in the administration of justice

3. The Centre for Human Rights, through its programme of advisory services and technical assistance, has been involved for many years in the training of judges, lawyers, prosecutors, police officers, prison personnel and military officials, in the area of human rights in the administration of justice. A recent review of these activities by the Centre has resulted in a new programme approach. Courses of this type offered by the Centre are now based upon the following elements:

(a) Collegial presentations. The Centre draws from a list of experts which is practical in orientation. Rather than assembling panels composed entirely of professors and theorists, the Centre opts for practitioners in the relevant field, be they lawyers, judges, or police officers. In the experience of the Centre, much more can be accomplished through the collegial approach of police discussing with police, than through a professor-student model of training;

(b) Training the trainers. National participants in the Centre's courses are selected on the understanding that their responsibilities will continue after completion of the training exercises. All are charged with conducting their own training or dissemination efforts after returning to their normal duty stations. In this way, the impact of such courses is multiplied severalfold, as the information imparted is disseminated throughout the institutions concerned;

(c) Pedagogical techniques. Courses developed by the Centre, in each case include a section designed to introduce a variety of effective techniques for the training of adult audiences. In particular, suggestions are to be made for the use of creative, interactive teaching methods, which offer the best hope for securing the active, engaged participation of the programme participants. Recent discussions between the staff of the Centre and a number of non-governmental organizations with extensive training experience have resulted in the identification of the following techniques as especially appropriate and effective in human rights training for adults: working groups, lecture/discussion, case-studies, panel discussion, round-table discussions, brain storming, simulation and role-playing, field trips, practical exercises and visual aids;

(d) Audience-specificity. The mere recitation of vague principles of general applicability offers little hope of affecting the actual behaviour of a given audience. To be effective, training and education efforts must be directly targeted and appropriately addressed to a particular audience, be they police, health care workers, lawyers, students or others. Accordingly, the Centre's teaching activities focus more on the standards directly relevant to, for instance, the daily work of police, and less on the history or structure of United Nations machinery;

(e) Practical approach. According to the report of a recent parliamentary commission investigating violations at one country's police stations, when confronted with evidence of abuses

"the police said that they lacked understanding about interrogation methods and techniques, that they carried out interrogations by outdated methods, and that they did not know how interrogations were carried out in democratic and developed countries. In order to compare their methods and improve them, they wanted to have the chance to do research and make observations on interrogation methods in democratic countries".

Such quotes reveal two important areas of focus, extendable by analogy to audiences other than police trainees. First, offering justifications of any kind for serious violations like torture demonstrates a lack of familiarity with the most fundamental of human rights standards in the administration of justice. There are no legitimate justifications for such activities. Secondly, police (and other groups) in the real world want to know not just what the rules are, but also how to do their job effectively within the confines of those rules. Training efforts which ignore either of these areas will likely be neither credible nor effective. Accordingly, the Centre includes practical information on proven techniques for the performance of the target audience's duties, as derived from the recommendations of experts and literature on the current best practice for the profession in question;

(f) Comprehensive presentation of standards. The courses of the Centre are intended to be thorough in their presentation of the relevant international standards. To this end, relevant instruments and simplified learning tools are translated and distributed to participants;

(g) Teaching to sensitize. The goals of courses developed by the Centre are not limited to the imparting of standards and practical skills, but also include exercises designed to sensitize trainees to their own potential for violative behaviour, however unwitting. For example, well-developed exercises which can have the effect of making trainees aware of notions of gender or racial bias in their own attitudes or behaviour can be quite valuable. Similarly, the special import of particular standards as they apply to women (for example) are not always readily obvious. Trainees should be made to understand that, for example, the term "degrading treatment", as found in the various international instruments, may imply different activities and thresholds when applied to women, as compared to men;

(h) Flexibility of design and application. To be universally useful, training courses must be designed in such a way as to facilitate their flexible use, without imposing a single rigid focus or approach on the trainers. Such courses must be adaptable to the particular cultural, educational, regional and experiential needs and realities of a diverse range of potential audiences within the target group;

(i) Evaluation tools. Training courses include pre- and post-training evaluative exercises, such as testing questionnaires, which serve three crucial purposes. Pre-course questionnaires, when properly utilized, allow a trainer to tailor the course to the particular educational needs of the audience. Post-course questionnaires and evaluation sessions will both allow trainees to gauge what they have learned, and assist in the continuous (crucial) modification and improvement of courses offered by the Centre.

4. This approach to professional training in human rights in the administration of justice is currently undergoing in-field testing by the Centre in its technical cooperation activities in a number of countries, and has been subjected to a series of revisions based upon those experiences.

Training course for Romanian law enforcement officials

5. A training course on human rights in the administration of criminal justice was held at Bucharest from 19 to 23 October 1992. The course was attended by some 70 Romanian police, prison, and military officials, drawn from duty stations around the country. A panel of international experts, assembled both for their familiarity with international human rights standards and their practical experience in the field of law enforcement, led discussions with participants on a variety of topics. A participatory working group model of instruction was utilized to ensure the active engagement of the participants.

6. Topics covered in the course included the sources, systems and standards for international human rights in the administration of criminal justice; the duties and guiding principles of ethical police conduct; the use of force in law enforcement; the crime of torture; effective methods of legal and ethical interviewing; human rights during arrest and interviewing; the legal status and rights of the accused; standards for search and seizure; pre-trial detention and the role of the police; the administration of justice in situations of internal conflict, states of emergency and civil disorder; legal crowd control measures; minimum standards for facilities for prisoners and detainees; prison health issues, including AIDS and the HIV virus; special categories of prisoners and detainees, including juveniles, women and remand prisoners; prison administration, discipline, punishment and recourse procedures; juvenile offenders and the police, prison and military officials; crowd control and the use of force; the rights of women in the administration of justice; protection and redress for victims; community policing and non-custodial measures; protection of refugees in criminal justice; non-discrimination and minority relations; investigating violations; effective human rights training; and the establishment and administration of democratic policing.

Seminar for Romanian judges and lawyers

7. From 30 November to 4 December 1992, the Centre held a seminar on human rights in the administration of justice for 40 Romanian judges, lawyers and procurators in Bucharest. Participants from around the country took part in discussions and working sessions lead by a panel of international and domestic experts on a range of subjects related to the human rights implications of the daily work of legal professionals. Topics covered included international sources, systems and standards for human rights; the independence of judges and lawyers; human rights in criminal investigations; the rights of the accused during arrest and detention; the elements of a fair trial; standards for the protection of prisoners; non-custodial measures; the administration of juvenile justice; equality and non-discrimination in the justice system; and the rights of women in the administration of justice.

Training course for professors of Romanian police academies

8. From 1 to 5 March 1993, the Centre for Human Rights, in cooperation with the Romanian Institute for Human Rights, conducted a training course on human rights in the administration of justice for professors of Romanian police academies. The course was conducted on the premises of the Institute in Bucharest and was attended by 50 participants, drawn principally from the Central Police Academy of Romania and the Romanian Military Training Academy, which also trains law enforcement personnel.

9. The purposes of the course were to familiarize participants with the international standards for human rights in the administration of criminal justice, to facilitate examination of humane and effective techniques for the performance of law enforcement functions in a democratic society, and to prepare participants to include this information in their own training activities.

10. The course sessions were led by a panel of international resource persons selected for their expertise in human rights, law enforcement, and professional training. Topics addressed in the course included: international sources, systems and standards; legal status and rights of the accused during arrest and pre-trial detention; human rights during police investigations; protection and redress for victims; treatment of juvenile offenders; policing demonstrations, internal disturbances and states of emergency; the rights of women in the criminal justice system; and non-discrimination and community policing. Ample time was allowed for group discussions and a participatory problem-solving (working group) method of instruction was employed.

Training course for Albanian law enforcement officials

11. From 2 to 6 November 1992, the Centre organized an intensive training course in Tirana on human rights in the administration of criminal justice for 60 Albanian police, prison and military officials. A panel of experts composed of authorities in the field of human rights and police officials and trainers from a number of democratic countries discussed with the participants both the international standards for human rights in the administration of justice, and practical techniques for the performance of law enforcement functions in a manner respectful of human rights. A participatory working group model of instruction was used to ensure the active involvement of the trainees.

12. Topics covered in the course included sources, systems and standards for international human rights in the administration of criminal justice; the duties and guiding principles of ethical police conduct; the use of force in law enforcement; the crime of torture; effective methods of legal and ethical interviewing; human rights during arrest and interviewing; the legal status and rights of the accused; standards for search and seizure; pre-trial detention and the role of the police; the administration of justice in situations of internal conflict, states of emergency and civil disorder; legal crowd control measures; minimum standards for facilities for prisoners and detainees; prison health issues, including AIDS and the HIV virus; special categories of prisoners and detainees, including juveniles, women and remand prisoners; prison administration, discipline, punishment and recourse procedures; juvenile offenders and police, prison and military officials; crowd control and the use of force; the rights of women in the administration of justice; protection and

redress for victims; community policing and non-custodial measures; protection of refugees in criminal justice; non-discrimination and minority relations; investigating violations; effective human rights training; and the establishment and administration of democratic policing.

Seminar for Albanian judges and lawyers

13. The Centre conducted a seminar in Tirana from 12 to 15 April 1993 for 60 practising judges and lawyers on the subject of human rights in the administration of justice. A panel of six international experts, primarily themselves practising judges, were assembled on the basis of their practical experience, their knowledge of human rights and their ability to address issues related to the administration of justice from both a theoretical and a practical perspective, in keeping with the Centre's approach to professional training, as described above. Participants were provided with a number of Albanian-language versions of the major United Nations instruments related to the administration of justice and attended sessions on international sources, systems and standards for human rights in the administration of justice; human rights during criminal investigations, arrest, and pre-trial detention; the independence of judges and lawyers; the elements of a fair trial; juvenile justice; protection of the rights of women in the administration of justice; standards for the treatment of prisoners; non-custodial measures; and non-discrimination and equal justice.

Lesotho seminar

14. A seminar conducted by the Centre for Human Rights in Lesotho, from 19 to 22 January 1993, in preparation for that country's elections of 1993, addressed a wide range of issues relating to human rights and democratic transition. Among them were issues of human rights in the administration of justice, including the role of police, military officials and the judiciary. After a three-day meeting in Maseru, follow-up seminars were held in the heavily populated districts of Mafetena, Mohale's Hoek, Leribe and Butha-Buthe.

Regional human rights seminar in Benin

15. The Centre for Human Rights provided financial support for a regional seminar for non-governmental organizations held from 2 to 7 September 1992 in Cotonou, with a particular focus on the campaign against torture. Two hundred participants drawn from 20 African countries and from Asia, Europe and Latin America examined all aspects of this severe violation of human rights in the administration of justice.

Training course for English-speaking African countries

16. In cooperation with the International Institute of Humanitarian Law, the Centre for Human Rights organized a training course on the implementation of international standards for human rights in the administration of justice for officials from English-speaking African countries from 9 to 13 March 1992. The course was held at San Remo, Italy, and focused both on international standards and machinery and on domestic application. Standards and mechanisms discussed included those of the United Nations and those of the African system, including the African Charter on Human and Peoples' Rights and the African Commission on Human and Peoples' Rights.

Training of magistrates, police and prison officials in Uruguay

17. Under a technical cooperation agreement with the Government of Uruguay, the Centre for Human Rights provided support for the training of magistrates, police and prison officials in human rights standards for the administration of justice throughout 1992. The Centre is currently conducting a joint review with the Government to gauge the progress of these initiatives.

Human rights training of Polish associate judges

18. Among the activities approved and financed under a technical cooperation agreement between the Centre for Human Rights and the Government of Poland was a series of training courses in 1992 for associate judges in Poland, including training in human rights in the administration of justice.

Meetings of experts for the elaboration of manuals on human rights in the administration of justice

19. In an effort to consolidate lessons learned in testing its new approach to training for human rights in the administration of justice, the Centre has made arrangements for the organization of two expert meetings on the subject. The first, on human rights training for police, was held from 4 to 6 August 1993 at Geneva, with expert participation from African, Asian, Latin American and European countries, as well as from the Centre for Human Rights, the Crime Prevention and Criminal Justice Branch and non-governmental organizations active in the field. The second, on training in human rights in the administration of justice for judges, lawyers and prosecutors, is planned for December 1993.

20. The publication of a manual to be produced from each meeting is scheduled for 1994. The purposes of these two manuals will be multifold. They will be intended to provide valuable practical support to the training activities which are a principal aspect of the United Nations human rights programme. Through their use, the impact of the Centre's training exercises can be enhanced, their approach and quality standardized and their efficiency maximized. The Centre believes that the production of such materials will obviate the need for the repeated ad hoc preparation of course materials for courses offered by the Centre. At the same time, they will be intended to facilitate an approach designed to "train the trainers", thus allowing for the broadest possible dissemination of the principles to be taught, with the minimum necessary resource expenditure. Wide distribution of the manuals, independent of training activities offered by the Centre, will also be possible, as the manuals themselves will include instruction on pedagogical techniques and the organization of effective courses.

## B. Human rights fellowship programme

21. The United Nations human rights fellowship programme, administered annually by the Centre for Human Rights pursuant to General Assembly resolution 926 (X), has continued its particular focus on human rights in the administration of justice. In 1992, as in the past, participants with responsibilities relating either to the administration of justice or to the domestic implementation of international human rights instruments, were drawn from a broad geographical base, with 12 fellows from Africa, 6 from Asia, 7 from the Americas, 3 from Eastern Europe and 4 from Western Europe. In 1992, the Centre expanded the programme to place selected fellows at the Crime Prevention and Criminal Justice Branch.

## C. Advisory services for the administration of justice

22. The Centre for Human Rights continued to provide advisory services of experts to assist States, at their request, in the domestic implementation of international standards for human rights in the administration of justice. Advice offered under the programme is derived from the standards themselves, from the comparative practice of other democratic jurisdictions, and from the analysis of expert consultants and specialized staff of the Centre.

### Advisory services to the Russian Federation

23. The Centre for Human Rights, at the request of the Russian Federation, organized a field mission to Moscow for Mr. Leandro Despouy, Special Rapporteur of the Subcommission on human rights and states of emergency, from 1 to 4 September 1992. The Special Rapporteur provided advice to the Russian authorities on human rights under states of emergency, including the impact of such emergencies on the administration of justice. The importance of ensuring that national legislation conforms to international conventions was emphasized.

### Advisory services to Romania

24. In the context of its comprehensive country programme of technical cooperation with Romania, the Centre aided the Romanian authorities throughout 1992 and 1993 by providing comparative legal texts sought by the Government to assist them in the process of legislative reform. In relation to the administration of justice, the Centre collected the organic laws of a number of democratic jurisdictions regarding the establishment and functioning of the "avocat du peuple" and the Superior Council of the Judiciary, and forwarded them to the Government for consideration.

### Advisory services to the Republic of Belarus

25. In July and August 1993, the Centre for Human Rights, at the request of the Government of Belarus, provided expert advisory services to assist in drafting a criminal code and a code of criminal procedure, to assure their conformity with international standards for human rights in the administration of justice. A detailed report, intended to assist in the drafting process, contains the observations of the expert, the Centre for Human Rights and the Crime Prevention and Criminal Justice Branch.

### D. Assessment of needs for the administration of justice

26. In the context of its new approach to technical assistance (see report of the Secretary-General on advisory services in the field of human rights, E/CN.4/1993/61), the Centre for Human Rights responds to requests for assistance by conducting comprehensive needs assessments, in order to determine pressing areas for technical cooperation in the field of human rights. Without exception, the Centre's needs assessment missions, and the reports that follow them, give particular attention to institutional needs for the proper administration of justice. In each case, needs relating to the judiciary, the police, the prison system, lawyers and prosecutors are addressed. Recent examples have included various levels of needs assessments in Guatemala (September 1992); Benin (October-November 1992); Sao Tome and Principe (September 1992); Cambodia (to explore means of strengthening cooperation with the United Nations Transitional Authority in Cambodia (UNTAC), as well as possible future activities of the Centre, in October 1992); Mongolia (October 1992); Albania (November 1992); Colombia (December 1992); Namibia (December 1992); Uruguay (December 1992); and Malawi (August-September 1993).

## III. ACTIVITIES OF UNITED NATIONS BODIES

27. The Centre for Human Rights continued to provide all necessary support to United Nations bodies working on the promotion and protection of human rights and on international standard-setting in the field, particularly to the Commission on Human Rights and its Subcommission on Prevention of Discrimination and Protection of Minorities. Recent relevant developments in regard to human rights in the administration of justice are consolidated and summarized below.

### A. Commission on Human Rights

28. At its forty-eighth session, the Commission on Human Rights, in its resolution 1992/31 of 28 February 1992, guided by General Assembly resolution 46/120, reaffirmed the importance of full and effective implementation of United Nations standards in this field; called on Member States to provide effective mechanisms and adequate resources to ensure their more effective implementation; recognized the role of non-governmental organizations in promoting these standards; called upon its subsidiary bodies to give special attention to these matters, in particular with regard to unacknowledged detention of persons, and to provide specific recommendations and proposals for advisory services; stressed the desirability of providing States, at their request, with assistance in this field, in particular under United Nations programmes of advisory services and technical assistance; requested the Subcommission on Prevention of Discrimination and Protection of Minorities to continue its practice of creating a sessional working group on detention to formulate concrete proposals regarding human rights in the administration of justice, and to make proposals to the Secretary-General regarding his reports pursuant to Subcommission resolution 7 (XXVII) on the human rights of persons subjected to any form of detention or imprisonment; invited the Commission on Crime Prevention and Criminal Justice to explore, at its first session, ways and means of cooperating with the human rights programme in this field; and decided to consider the question further at

its forty-ninth session under the agenda item entitled "Question of human rights of all persons subjected to any form of detention or imprisonment".

29. At its forty-ninth session, in its resolution 1993/32 of 5 March 1993, the Commission on Human Rights, inter alia, invited the international community to respond favourably to requests from African and other developing countries for assistance in this area; commended those developed countries that had provided financial assistance to the United Nations programme of advisory services and technical cooperation in the field of human rights, and appealed to them to consider increasing their assistance; and urged the Secretary-General to consider favourably applications for assistance made by African Member States and other developing countries regarding the administration of justice at the national level within the framework of the United Nations programme of advisory services and technical cooperation in the field of human rights.

30. The Commission addressed itself to the issue of human rights in the administration of justice in at least 15 additional resolutions during its forty-ninth session. In its resolution 1993/33 of 5 March 1993, welcoming the report of the Secretary-General on human rights and forensic science (E/CN.4/1993/20), recalling the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, adopted by the Economic and Social Council in its resolution 1989/65 of 24 May 1989, and considering the proposed model autopsy protocol contained in the United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, the Commission, inter alia, invited States to take measures to introduce into their rules and practices the international standards contained in the Principles and requested the Secretary-General to identify forensic experts to assist with advisory services and thematic and country mechanisms. Resolutions and decisions were also adopted on the question of arbitrary detention; torture and other cruel, inhuman or degrading treatment or punishment; human rights and states of emergency; the impunity of perpetrators of violations of human rights; independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers; application of international standards concerning the human rights of detained juveniles; and the right to a fair trial. 2/

31. In its resolution 1993/34 of 5 March 1993, the Commission, inter alia, took note of the report of the working group on the draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 3/ and requested the working group to continue its work and the Secretary-General to invite Governments, the chairmen of the human rights treaty bodies, the Special Rapporteur on the question of torture and the intergovernmental and non-governmental organizations concerned to submit their observations to the working group.

32. On the question of enforced or involuntary disappearances, the Commission adopted resolution 1993/35 of 5 March 1993 at its forty-ninth session, in which, having expressed its deep concern over the persistence of the practice of disappearances in various parts of the world, it expressed its appreciation to the Working Group on Enforced or Involuntary Disappearances for submitting its report, 4/ noted with concern the failure of some Governments to cooperate with the Working Group, or to act on the recommendations concerning them made by the Working Group; and requested the Working Group to continue its task.

33. Also at its forty-ninth session, the Commission adopted resolution 1993/36 of 5 March 1993, on the question of arbitrary detention. Having considered the report of the Working Group on Arbitrary Detention, 5/ as well as the revised report by Mr. Louis Joinet on the practice of administrative detention, 6/ the Commission, inter alia, requested the Working Group to continue to gather information on possible arbitrary detentions; called upon Governments to cooperate with the Working Group; encouraged Governments to consider inviting the Working Group to their countries for the purpose, inter alia, of making recommendations for advisory services and technical assistance; and encouraged States to take appropriate measures and ensure that national legislation was in conformity with relevant international instruments.

34. In its resolution 1993/37 of 5 March 1993 on the status of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Commission took note of the annual report of the Secretary-General on the subject, 7/ as well as of the outcome of the first session of the open-ended working group of the Commission on the elaboration of a draft optional protocol to the Convention. Seriously concerned about the alarming number of cases of torture and other cruel, inhuman or degrading treatment or punishment which continued to be reported from various parts of the world, the Commission encouraged States parties to notify the Secretary-General as soon as possible of their acceptance of the amendments to articles 17 and 18 of the Convention; stressed the importance of strict adherence by States parties to their obligations regarding the financing of the Committee against Torture, thus enabling it to carry out its work; and urged all States to become parties to the Convention as a matter of priority.

35. Also on the subject of torture, the Commission adopted resolution 1993/38 of 5 March 1993, in which it appealed for contributions to the United Nations Voluntary Fund for Victims of Torture. In addition, it adopted resolution 1993/40, of the same date, in which it commended the Special Rapporteur on torture on his report 8/ and stressed the recommendations of the Special Rapporteur concerning, inter alia: the importance of instituting a system of periodic visits by independent experts to places of detention; the active role of the judiciary in protecting detainees; the dangers of incommunicado detention; the importance of access to a lawyer for detainees; the importance of the right to challenge one's detention in court; the need for strict measures against medical professionals who play a role in torture; the importance of limiting interrogations to official centres and with careful recording and humane methods (including a prohibition on hooding or blindfolding of detainees); the advisability of establishing independent national complaints procedures; and the importance of severely punishing persons responsible for torture. The Commission encouraged the Special Rapporteur to make appropriate recommendations for advisory services to assist national authorities in combating torture and urged the Secretary-General to make qualified experts available for these purposes.

36. Further addressing the subject of human rights in the administration of justice, and expressly referring to General Assembly resolution 46/120, the Commission adopted resolution 1993/41 of 5 March 1993, in which it reaffirmed the importance of the full implementation of all United Nations standards on human rights in the administration of justice; reiterated its call upon all Member States to spare no effort to ensure more effective implementation of

those standards; recognized the important role that non-governmental organizations could play in that area; called upon its subsidiary bodies to give special attention to the effective protection of human rights in the administration of justice; stressed the desirability of providing States with advisory services and technical assistance in the field of the administration of justice; requested the Subcommission to continue its practice of creating a sessional working group on detention; and invited the Commission on Crime Prevention and Criminal Justice to explore ways of cooperating with the human rights programme in this field.

37. In its resolution 1993/43 of 5 March 1993 on the question of the impunity of perpetrators of violations of human rights, the Commission inter alia took note with satisfaction of the working paper 9/ prepared on the subject by Mr. El Hadji Guissé and Mr. Louis Joinet and endorsed the decision of the Subcommission to request the authors of the working paper to prepare a study on the matter, in particular to determine the scope of the phenomenon of impunity and to propose measures to combat the practice.

38. In its resolution 1993/44 of 5 March 1993, the Commission welcomed the recommendations made in the report of the Special Rapporteur of the Subcommission on the independence of the judiciary and the protection of practising lawyers, 10/ and endorsed the decision of the Subcommission to entrust the Special Rapporteur with the preparation of a follow-up report on strengthening the independence of the judiciary and the protection of practising lawyers.

39. In regard to extrajudicial, summary or arbitrary executions, the Commission, in its resolution 1993/71 of 10 March 1993, strongly condemned the large number of such incidents; welcomed the appointment of Mr. Bacre Waly Ndiaye as the new Special Rapporteur for extrajudicial, summary or arbitrary executions; took note of the report of the Special Rapporteur; 11/ requested the Special Rapporteur to continue to fulfil the mandate entrusted to him; requested that the next report pay particular attention to the subject as it regarded children and participants in demonstrations and other peaceful manifestations; urged Governments to undertake measures to lower the level of violence and loss of life during manifestations and disturbances, and appealed to them to ensure humane and dignified treatment of persons deprived of their liberty; encouraged all relevant actors to support human rights training programmes for law enforcement officers and government officials; and urged Governments to cooperate with the Special Rapporteur in his work; requested the Special Rapporteur to enhance his dialogue with Governments by following up on communications dispatched to Governments transmitting allegations of extrajudicial, summary or arbitrary executions and allegations of imminent or threatened executions, as well as by following up on recommendations made by the Special Rapporteur in reports of on-site visits to particular countries.

40. The Commission responded to the final report of the Special Rapporteur on the human rights of detained juveniles 12/ and to the addendum to that report containing a note by the Secretary-General on the subject, in its resolution 1993/80 of 10 March 1993. In that resolution, the Commission thanked the Special Rapporteur and welcomed the proposal of the Secretary-General to organize an expert meeting on the subject in 1994 under the auspices of the

Centre for Human Rights, the United Nations Children's Fund, and the Crime Prevention and Criminal Justice Branch.

41. Also during its forty-ninth session, the Commission decided to endorse the requests of the Subcommission to the Special Rapporteurs on the right to a fair trial to continue their study (decision 1993/106); to the Special Rapporteur on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms to continue his study (decision 1993/107); and to Ms. Claire Palley to prepare, without financial implications, an outline of the possible utility, scope and structure of a study on the issue of privatization of prisons (decision 1993/108).

## B. Subcommission on Prevention of Discrimination and Protection of Minorities

42. The Subcommission on Prevention of Discrimination and Protection of Minorities has addressed itself to a wide range of issues relating to human rights in the administration of justice. In particular, at its forty-fourth session, the Subcommission referred draft resolutions to the Commission on Human Rights on the question of human rights and states of emergency; the question of the impunity of perpetrators of violations of human rights; and the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers. Draft decisions referred to the Commission included those on the right to a fair trial; the application of international standards concerning the human rights of detained juveniles; the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms; and the study of the issue of the privatization of prisons. 13/

43. The Subcommission also adopted a number of resolutions during that session relevant to human rights in the administration of justice. After having examined the first three reports of its Special Rapporteurs on the right to a fair trial, 14/ the Subcommission adopted resolution 1992/21 of 27 August 1992, in which inter alia it requested a continuation of the series of reports, to include recommendations for strengthening the implementation of the right to a fair trial in the light of interpretations by international bodies and contemporary national practices, as well as suggestions on how the right might be further protected, notably by making the right, or certain aspects of it, non-derogable, and by incorporating basic fair trial guarantees into international standards.

44. The Subcommission also adopted resolution 1992/22 of 27 August 1992, on the question of human rights and states of emergency. In that resolution, the Subcommission inter alia expressed its appreciation to its Special Rapporteur for his fifth annual report and list of States which, since 1 January 1985, have proclaimed, extended or terminated a state of emergency. The Subcommission also recognized the fundamental importance of effective national legislation enabling emergency situations to be dealt with in conformity with international norms. It requested the Secretary-General, under the programme of advisory services in the field of human rights, to assist States in this area, through the Special Rapporteur. The Special Rapporteur was invited to continue his mandate, and, in particular, to continue his work on the draft guidelines for the development of

national legislation on states of emergency and, in particular, to examine the question of non-derogable rights.

45. In its resolution 1992/23 of 27 August 1992, the Subcommission addressed the question of impunity of perpetrators of violations of human rights. Convinced that the increasingly widespread practice of impunity for perpetrators of violations of human rights in various regions of the world is a fundamental obstacle to the observance of human rights, and having considered guidelines proposed in a working paper submitted by two of its members, 9/ the Subcommission decided to request the authors of the working paper to draft a study on the issue in order, in particular, to determine the scale of the phenomenon of impunity and to propose measures to combat that practice.

46. On the issue of the application of international standards concerning the human rights of detained juveniles, the Subcommission adopted resolution 1992/25 of 27 August 1992, in which, noting with satisfaction the report of its Special Rapporteur on the subject 12/ and expressing concern that, because of the great vulnerability of juveniles to abuse, neglect and injustice and the profound and indelible impact of such traumatic experiences on their developing personalities, violations of the human rights of detained juveniles had serious consequences for the juveniles concerned and for society, it requested the Secretary-General to provide necessary assistance for the organization of a meeting of experts on the application of international standards concerning the human rights of detained juveniles. That meeting is currently planned for 1994, and will include representatives of the Centre for Human Rights, the Crime Prevention and Criminal Justice Branch, the United Nations Children's Fund (UNICEF), the Committee on the Rights of the Child and the Working Group on Contemporary Forms of Slavery.

47. In its resolution 1992/38 of 28 August 1992, the Subcommission addressed the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers. The Subcommission inter alia took note with appreciation of the latest report of the Special Rapporteur on the subject; called upon Governments to strengthen the independence of the judiciary and the protection of practising lawyers, as fundamental elements in the protection of human rights; and decided to entrust the Special Rapporteur with the preparation of another report, bringing to the attention of the Subcommission information on practices and measures which have served to strengthen or weaken the independence of the judiciary and the protection of practising lawyers in accordance with United Nations standards and to propose specific recommendations regarding the independence of the judiciary and the protection of practising lawyers to be taken into account in the advisory services and technical assistance programmes and projects of the United Nations.

48. At the same session, the Subcommission decided to establish a sessional working group on detention (decision 1992/101). The working group was composed of the following members of the Subcommission: Mr. Boutkevitch, Mr. Despouy, Mr. Guissé, Mr. Hakim and Mr. Joinet. The Subcommission also decided, taking into account an earlier working paper submitted by Mr. Miguel Alfonso Martínez 15/ and a working paper submitted by the Secretary-General 16/ to request Mrs. Claire Palley to prepare an outline of the possible utility, scope and structure of a special study on the privatization of prisons, and the Secretary-General to provide Mrs. Palley with all possible

assistance for the completion of her task (decision 1992/107). The outline was submitted to the Working Group on Detention and to the Subcommission at its forty-fifth session. 17/

## IV. DISSEMINATION OF RELEVANT INTERNATIONAL INSTRUMENTS

49. Efforts have continued to ensure the widest possible dissemination of the texts of the international instruments relevant to human rights in the administration of justice. These instruments, which are listed in the annex to the present report, have been incorporated in the new edition of the United Nations publication Human Rights: A Compilation of International Instruments. They are used in the Centre's training and advisory service activities, and relevant instruments have been translated and disseminated on an ad hoc basis in the context of agreements for technical cooperation. In addition, for activities conducted in the English, French or Spanish languages, the Centre has provided as a basic resource document the "Consolidated list of the Secretary-General of provisions in the various United Nations standards relating to human rights in the administration of justice". 18/

50. In each of the training courses and seminars described in section II above, relevant international instruments were translated (where necessary), and distributed to participants. In addition, specific human rights information projects have been undertaken by the Centre in a number of countries and have included many of the instruments set out in the annex to this report. In this way, many of the relevant instruments have been distributed in one form or another in, among other countries, Albania, Benin, Cambodia, Lesotho, Mongolia, Romania and Uruguay.

## V. COORDINATION OF ACTIVITIES

51. The Centre for Human Rights has enjoyed considerable cooperation with the Centre for Social Development and Humanitarian Affairs in its activities relating to human rights in the administration of justice. Close cooperation between the Advisory Services and Technical Assistance Branch of the Centre for Human Rights and the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs has resulted in the participation of staff of the Crime Prevention and Criminal Justice Branch in many of the activities conducted by the Centre for Human Rights. For example, the development of the approach to training of the Centre for Human Rights, the courses and seminars offered in various countries, advisory services offered by the Centre for Human Rights, and the development of training manuals for human rights in the administration of justice have all benefited from the substantive participation of the Crime Prevention and Criminal Justice Branch.

52. There has also been cooperation in the area of standard-setting. For example, the Crime Prevention and Criminal Justice Branch has provided the Centre for Human Rights with valuable information with respect to the work of the human rights bodies on the draft optional protocol to the Convention against Torture, on the independence of the judiciary, on impunity and on a number of related issues.

53. Also of note in this regard is Subcommission resolution 1992/38 of 28 August 1992, in which it entrusted Mr. Louis Joinet, its Special Rapporteur on the independence of the judiciary, with the task of examining ways and means of enhancing cooperation and avoiding overlap and duplication in the work of the Commission on Crime Prevention and Criminal Justice and that of the Subcommission. The proposals of the Special Rapporteur were met with appreciation by both the Commission on Crime Prevention and Criminal Justice and the Crime Prevention and Criminal Justice Branch. The recommendations have become a subject for joint examination and further elaboration with a view to enhancing cooperation in this area, as proposed by the Subcommission and endorsed by the Commission on Human Rights in its resolution 1993/44.

54. In order to further cooperation and the exchange of information within the Organization, the second session of the Commission on Crime Prevention and Criminal Justice was attended by the Chairman of the Subcommission at its forty-fourth session, by the Special Rapporteur on torture and by a representative of the Centre for Human Rights. Similarly, the latest sessions of the Commission on Human Rights and its Subcommission were attended by representatives of the Crime Prevention and Criminal Justice Branch.

55. The human rights fellowship programme, administered by the Centre for Human Rights under the programme of advisory services and technical assistance (see sect. II above), has also benefited from the close cooperation of the Crime Prevention and Criminal Justice Branch. In 1992, the fellowship programme was expanded to include the placement of selected fellows at the Crime Prevention and Criminal Justice Branch.

56. The Centre for Human Rights also organizes regular inter-agency meetings, joint working groups and ad hoc consultations with a view to avoiding duplication, exchanging information, and improving efficiency in the use of limited resources. The Crime Prevention and Criminal Justice Branch is regularly involved in these activities. The fourth inter-agency meeting on human rights, organized by the Centre for Human Rights on 25 June 1992 at Geneva, for example, was attended by representatives of the Crime Prevention and Criminal Justice Branch. Finally, liais ns have been created in both Centres to assure coordinated monitoring of developments relating to human rights in the administration of justice.

## VI. CONCLUSIONS

57. Human rights in the administration of justice continues to be a primary focus of all aspects of the United Nations human rights programme, including technical assistance, standard-setting and dissemination of information. Effective coordination of activities undertaken in this field, within the United Nations system and with non-governmental organizations, intergovernmental organizations and Governments is crucial to the continued success of these efforts. The numerous existing United Nations standards relative to human rights in the administration of justice provide a strong substantive framework for protection, and thus should remain the focus of sustained and effective dissemination and technical assistance efforts aimed at their implementation at the national level, in particular through the programme of advisory services and technical assistance of the Centre for Human Rights.

58. One of the main requirements for effective national protection of human rights in the administration of justice is the existence of adequate national laws and institutions. Therefore, coordination of efforts should continue so that United Nations advisory services and technical assistance may effectively provide for the services of experts for, inter alia, the revision of national legislation in compliance with relevant international instruments. Similar efforts should continue for encouraging the establishment of national institutions and for strengthening existing national institutions.

Notes

1/ E/CN.4/1993/61.

2/ See E/CN.4/1993/122.

3/ E/CN.4/1993/28 and Corr.1.

4/ E/CN.4/1993/25 and Add.1.

5/ E/CN.4/1993/24.

6/ E/CN.4/Sub.2/1990/29 and Add.1.

7/ E/CN.4/1993/21.

8/ E/CN.4/1993/26.

9/ E/CN.4/Sub.2/1992/18.

10/ E/CN.4/Sub.2/1992/25 and Add.1.

11/ E/CN.4/1993/46.

12/ E/CN.4/Sub.2/1992/20.

13/ See E/CN.4/1993/2-E/CN.4/Sub.2/1992/58.

14/ See E/CN.4/Sub.2/1990/34, E/CN.4/Sub.2/1991/29 and E/CN.4/Sub.2/1992/24 and Add.1-3.

15/ E/CN.4/Sub.2/1991/56.

16/ E/CN.4/Sub.2/1992/21.

17/ E/CN.4/Sub.2/1993/21.

18/ E/CN.4/Sub.2/1991/26.

ANNEX

List of instruments relevant to human rights in the administration of justice

The following instruments, in addition to the principal human rights covenants and conventions, have been included in the latest edition of Human Rights: A Compilation of International Instruments and serve as the basis for technical assistance and information activities carried out by the Centre for Human Rights in the area of human rights in the administration of justice.

1. Standard Minimum Rules for the Treatment of Prisoners

2. Basic Principles for the Treatment of Prisoners

3. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

4. United Nations Rules for the Protection of Juveniles Deprived of their Liberty

5. Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

6. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

7. Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or degrading Treatment or Punishment

8. Safeguards guaranteeing protection of the rights of those facing the death penalty

9. Code of Conduct for Law Enforcement Officials

10. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

11. Basic Principles on the Role of Lawyers

12. Guidelines on the Role of Prosecutors

13. United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)

14. United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)

15. United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)

16. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

17. Basic Principles on the Independence of the Judiciary

18. Model Treaty on the Transfer of Proceedings in Criminal Matters

19. Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released

20. Declaration on the Protection of All Persons from Enforced Disappearance

21. Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions

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# HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS QUESTIONS, INCLUDING ALTERNATIVE APPROACHES FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

## Right to development

## Note by the Secretary-General

In accordance with paragraph 8 of General Assembly resolution 47/123 of 18 December 1992, the Secretary-General has the honour to submit to the General Assembly his report on the effective implementation of the Declaration on the Right to Development (E/CN.4/1992/10) concerning, inter alia, the measures taken by Governments, United Nations bodies and the specialized agencies to implement the right to development. The report will be made available to members of the General Assembly at its forty-eighth regular session under the symbol E/CN.4/1992/10.

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# HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS QUESTIONS, INCLUDING ALTERNATIVE APPROACHES FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

## Situation of human rights in southern Lebanon

## Note by the Secretary-General

1. By its decision 1993/300 of 28 July 1993, the Economic and Social Council took note of the report of the Commission on Human Rights, 1/ containing resolution 1993/67 of 10 March 1993 on the situation of human rights in southern Lebanon. In paragraph 6 of the resolution, the Commission requested the Secretary-General (a) to inform the Government of Israel of the resolution and call upon it to provide information concerning the extent of its compliance therewith, and (b) to report to the General Assembly at its forty-eighth session and to the Commission on Human Rights at its fiftieth session on the results of his endeavours in that regard.

2. In view of the requests formulated in paragraph 6 of the resolution, the Secretary-General addressed on 2 April 1993 a note verbale to the Minister for Foreign Affairs of Israel.

3. No reply had been received at the time of the preparation of the present report.

## Notes

1/ Official Records of the Economic and Social Council, 1993, Supplement No. 3 (E/1993/23).

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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

# Situation of human rights in Myanmar

## Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report prepared by Professor Yozo Yokota, Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar, in accordance with paragraph 16 of the Commission on Human Rights resolution 1993/73 of 10 March 1993 and Economic and Social Council decision 1993/278 of 28 July 1993.

ANNEX

Interim report on the situation of human rights in Myanmar prepared by Professor Yozo Yokota, Special Rapporteur of the Commission on Human Rights, in accordance with Commission resolution 1993/73 and Economic and Social Council decision 1993/278

CONTENTS


| | | Paragraphs | Page |
|---|---|---|---|
| I. | INTRODUCTION | 1 - 11 | 4 |
| II. | MEMORANDUM OF ALLEGATIONS TO THE GOVERNMENT OF MYANMAR | 12 | 5 |
| | A. Arbitrary detention | | 5 |
| | B. Torture, cruel, inhuman or degrading treatment | | 6 |
| | C. Disappearances | | 7 |
| | D. Summary or arbitrary execution | | 8 |
| | E. Repatriated Muslims from Northern Arakan State | | 9 |
| | F. Labour rights | | 10 |
| | G. Rights of the child | | 11 |
| | H. The National Convention | | 11 |
| | I. Rights devolved from citizenship status | | 12 |
| | J. Steps to improve the human rights situation | | 13 |
| | K. Social, cultural and economic rights | | 13 |
| III. | INFORMATION RECEIVED SUBSEQUENT TO THE MEMORANDUM OF ALLEGATIONS OF 30 SEPTEMBER 1993 | 13 - 25 | 13 |
| | A. Arrests and detention | 13 - 14 | 13 |
| | B. Courts and trials | 15 - 19 | 15 |
| | C. Law Safeguarding the State against Dangers of Subversive Elements | 20 - 22 | 16 |
| | D. Repatriation of Muslims of Myanmar | 23 - 24 | 16 |
| | E. Social and economic rights | 25 | 17 |

CONTENTS (continued)


| | | Paragraphs | Page |
|---|---|---|---|
| IV. | RESPONSE BY THE GOVERNMENT OF MYANMAR TO THE MEMORANDUM OF THE SPECIAL RAPPORTEUR | 26 | 17 |
| | A. Arbitrary detention | | 17 |
| | B. Matters concerning arrests or detention and trial of cases | | 19 |
| | C. Disappearance | | 19 |
| | D. Summary or arbitrary executions | | 20 |
| | E. Repatriated Muslims from Northern Arakan State | | 20 |
| | F. Labour rights | | 21 |
| | G. Forced portering and forced labour | | 22 |
| | H. Rights of the child | | 23 |
| | I. The National Convention | | 23 |
| | J. Rights devolved from citizenship status | | 26 |
| V. | PRELIMINARY OBSERVATIONS | 27 - 52 | 27 |

# I. INTRODUCTION

1. On 10 March 1993, at its forty-ninth session, the Commission on Human Rights adopted resolution 1993/73 entitled "Situation of human rights in Myanmar" without a vote. In paragraph 16 of the resolution, the Commission decided to extend for one year the mandate of the Special Rapporteur to establish or continue direct contacts with the Government and the people of Myanmar, including political leaders deprived of their liberty, their families and their lawyers, and requested him to report to the General Assembly at its forty-eighth session and to the Commission at its fiftieth session. The present report, which was finalized on 26 October 1993, is being presented in accordance with that request.

2. In that resolution, the Commission noted the visit of the Special Rapporteur in December 1992 and deplored the continued seriousness of the situation of human rights in Myanmar, in particular the fact that a number of political leaders, including Daw Aung San Suu Kyi and other leaders of the National League for Democracy, remained deprived of their liberty, and that in spite of the provisions of Commission resolution 1992/58 of 3 March 1992 requesting the Myanmar authorities to extend their full and unreserved cooperation to the Special Rapporteur, he was denied access to some persons, in particular detainees, including Daw Aung San Suu Kyi, and that a number of persons wishing to provide testimony were subjected to intimidation or harassment.

3. In the resolution the Commission expressed its deep concern at the violations of human rights in Myanmar, which remained extremely serious, in particular those concerning the practice of torture, summary and arbitrary execution, forced labour, including forced portering for the military, abuse of women, politically motivated arrests and detentions, the existence of important restrictions on the exercise of fundamental freedoms and the imposition of oppressive measures directed, in particular, at minority groups which have resulted in flows of refugees towards neighbouring countries and the absence of guarantees for the physical integrity and well-being of returnees to Myanmar.

4. The Commission also noted with concern that the meetings of the National Convention to prepare the basic elements for the drafting of a new constitution have excluded most of the representatives duly elected in 1990 and that one of the objectives of the Convention has been to maintain the participation of the armed forces (Tatmadaw) in a leading role in the future political life of the State.

5. The Commission urged the Government to take every appropriate measure to allow all citizens to participate freely in the political process in accordance with the principles of the Universal Declaration of Human Rights and to accelerate the process of transition to democracy, in particular through convening the Parliament elected in May 1990, lifting restraining orders placed on a number of political leaders, releasing those who are detained, ensuring that political parties can function normally and lifting restrictions on the right of association and assembly, as well as the right to freedom of opinion and expression, to restore the protection of persons belonging to minority groups especially in the framework of citizenship laws and to put an end to

violations of the right to life and integrity of the human being, to the practices of torture, abuse of women, forced labour, enforced disappearances and summary executions.

6. At its substantive session of 1993, the Economic and Social Council adopted decision 1993/278 approving Commission resolution 1993/73.

Visit to Myanmar by the Special Rapporteur

7. In September 1993, the Special Rapporteur addressed a letter to the Government of Myanmar requesting to visit the country from 9 to 16 November 1993. He requested the honour of audiences with high governmental officials, meetings in circumstances providing full confidentiality with political leaders, including those in detention or under restriction, and in particular with Daw Aung San Suu Kyi. The Special Rapporteur further requested full and free access to all individuals, non-governmental and intergovernmental, whom he may deem necessary to the carrying out of his mandate or who express the will to meet with the Special Rapporteur. Visits to prisons and other centres of detention, with confidential contact with those detained, were also requested.

8. The Special Rapporteur also requested full access to other areas of the country, in particular Rakhine State for the purpose of carrying out unrestricted and confidential visits with the recent repatriates and returnees.

9. By a letter dated 15 September 1993, the Government replied that the Special Rapporteur would be welcome in Myanmar.

10. By a letter dated 8 October 1993, the Government further replied that the proposed dates for the visit of 9 to 16 November 1993 would be agreeable.

11. The Special Rapporteur also foresees carrying out a visit to Thailand from 16 to 20 November 1993.

## II. MEMORANDUM OF ALLEGATIONS TO THE GOVERNMENT OF MYANMAR

12. By a letter dated 30 September 1993 to the Minister for Foreign Affairs of the Union of Myanmar, the Special Rapporteur transmitted the following memorandum of allegations received by him of human rights violations reported to have occurred in Myanmar:

"A. Arbitrary detention

"1. In regard to arbitrary detention, the Special Rapporteur welcomes reports that over 1,700 persons detained under the emergency regulations have been released since April 1992.

"2. Allegations have nevertheless been received that under the persistent State Law and Order Restoration Council (SLORC) orders and other emergency decrees, numerous persons have been arrested for criticizing SLORC, the army (Tatmadaw) or for openly criticizing the process being undertaken in

the National Convention for the drafting of a new constitution and the transfer of power to a civilian government. Reports indicate that up to 60 persons may have been detained since July 1993 for engaging in political activity although many of these have now been released.

"3. Some persons were reportedly detained without charges, while others have reportedly been sentenced to lengthy terms in trials which did not afford the minimum standards of judicial guarantees as set out under articles 10 and 11 of the Universal Declaration on Human Rights. In this regard, it has been alleged that in December 1992 the following persons were arrested for printing and distributing leaflets criticizing the National Convention: U Aung Myint, aged 57, Daw Khin Mar Aye, aged 53, and Htay Myint (alias Khin Soe), aged 37.

"4. In January 1993, 14 persons were allegedly arrested for having distributed leaflets which were, according to the Government, 'aimed at obstructing the National Convention and undermining peace and tranquillity in the country'. In August, Dr. Aung Khin Sint, the elected NLD representative for the Mingala Taungnyunt-1 constituency and his assistant, U Than Min, were allegedly arrested for being 'engaged in unscrupulous activities with intent to undermine the National Convention'.

"5. The Special Rapporteur has received allegations of arrests of the following persons in the Yangon area in August 1993 in connection with the National Convention: Ma Thi Da; Nay Thin Myint; Bo Lay; Thet Oo; Tin Htune; Khin Maung; Kyaw Than; Kyi Myint and Than Min.

"6. These persons are allegedly being detained in Insein prison. It is not known if formal charges have been drawn or if a minimum level of judicial guarantees has been accorded. It is also not known if the families of these persons have been notified.

"7. Other reports have been received, in some cases supported by photographic evidence, of large portions of entire villages being detained for 'defying Governmental authority' by having refused displacement or, as in the case of over 100 villagers in the Irrawaddy Delta, for refusing to turnover rice crops to the military.

"8. The Special Rapporteur would appreciate the Government providing information regarding the detained persons described above, their places of detention, the formal charges lodged against them, the judicial guarantees accorded them before, during and after trial, the sentences received and whether these persons are allowed regular visits by their families and legal counsel.

"B. Torture, cruel, inhuman or degrading treatment

"9. Extensive allegations have been received that torture and other cruel, inhuman or degrading treatment has continued to be used by the Myanmar army (inter alia, the 99th Light Infantry Division and the 301st Battalion), police and intelligence services, that such practices have been used routinely in the interrogation of persons and the treatment of porters,

/...

forced labourers and members of ethnic minorities. It has been alleged that the practices in prisons include poor sanitary conditions, shackling, beatings, sleep, food and water deprivation, electric shock, the use of falanga, near suffocation and psychological torture, including threats of death to the individual and his family.

"10. In the context of military operations, forced relocation, portering and forced labour, the practices allegedly involve the carrying of heavy supplies up mountains and in extreme weather conditions, beating, stabbing, pouring salt or other toxic material into open wounds, drowning, rape, burning and mutilation before execution. It has also been alleged that men, women and adolescents of ethnic minorities continue to be used as mine sweeps and to be forced to precede army battalions so that they will not be attacked by opposition forces.

"11. Please respond to these allegations, indicating what steps have been undertaken to comply with the prohibition against these practices as encompassed by article 5 of the Universal Declaration of Human Rights, article 3 common to the Geneva Conventions of 1949, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (General Assembly resolution 43/173 of 9 December 1988) and the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment (General Assembly resolution 3452 (XXX) of 9 December 1975). Please indicate whether dissemination of these principles within the operational security forces has been undertaken. Please detail any independent or Government investigations which may have been carried out in regard to these allegations, whether any military or security personnel have been tried and sentenced, dismissed from duty or otherwise disciplined for their part in any established violations.

"C. Disappearances

"1. Disappearance after mass demonstrations and in connection with the National Convention

"12. Since he was appointed in March 1992, the Special Rapporteur has continually received allegations stating that during the mass demonstrations of 1988 and December 1991, hundreds of persons, including students, monks, workers, writers, professors and others, were arrested or shot to death and that the whereabouts of many of these persons have never been established. It is believed that many remain in unacknowledged detention and that others have been buried in mass graves reported to be located in an army base near the airport and in the new township, Hlaing Thaya.

"13. Several friends and relatives of missing persons told the Special Rapporteur during his visit to Myanmar that they had not been able to transmit cases to him or to the Working Group on Enforced or Involuntary Disappearances because of a lack of knowledge of the available international mechanisms, a lack of experience in preparing the information for cases and a serious concern for their own physical safety.

"14. It has been reported that many of the persons detained recently for their activities in connection with the National Convention have been held in incommunicado detention and that generally these detentions remain unacknowledged for at least a period of time after the detention.

"15. Please indicate whether any steps have been taken by the Government to investigate the whereabouts of the alleged missing persons; if there are any institutions or Governmental organs set-up to address the question of disappearances, whether any legal or administrative procedures for the purpose of clarification (such as habeas corpus) are available to the relatives of missing persons, the number of times these remedial procedures have been used and to what effect. Please indicate whether any regulations exist requiring security forces and/or those responsible for prisons or other detention centres to maintain a register and to report the particulars of all persons under detention.

"16. Please indicate whether there is a prohibition under law against unacknowledged or incommunicado detention and whether certificates of death are required by law, whether the cause of death is mandatory on the certificate and if the certificate is accessible to the relatives of the deceased.

"2. Disappearance in the context of forced portering

"17. Other reports continue to be received of persons disappearing after having been abducted by the army throughout the country to function as porters for the army or as labourers on construction projects.

"18. Please comment on these general allegations indicating whether security force personnel are under an obligation to report to their superiors or to an administrative body the names of all persons detained by them or placed under their custody for whatever reason.

"D. Summary or arbitrary execution

"19. As noted in his report to the Commission on Human Rights at its forty-ninth session, the Special Rapporteur welcomed the fact that all death sentences have been commuted to life imprisonment. 1/ Reports however, of extra-judicial executions have been continually received since the 1992 visit to Myanmar by the Special Rapporteur. These have allegedly been carried out particularly against ethnic minorities. In 1993, the Tatmadaw did not launch a dry-season offensive, yet extra-judicial executions by the Tatmadaw of hundreds of ethnic civilians were reported to have taken place outside areas of conflict.

"20. The reports focused on executions of civilians accused of being insurgents or of providing aid to insurgents, of civilians in one village as retaliation for attacks on the Tatmadaw in another area, of whole families or even entire villages that resisted relocation. In other cases, some persons were allegedly executed when they resisted becoming porters for the army or labourers on military construction projects. Some village

head-men were also reportedly executed for not providing the requisite number of porters or labourers as demanded by the army.

"21. Among the allegations received were the extra-judicial executions of scores of Mon persons resisting relocation in five villages in Yebyu Township in February 1993 and in seven villages in Thanbuzayat Township in March 1993. Eye-witness accounts were received from Klaingbwe Township of retaliation killings of Kayin people and from Kyauk Kyi Town, in Nyaunglebin District, Pegu Division, of Kayin persons resisting relocation. In this case, the allegations were consistent with the copies of relocation orders allegedly issued by the army, which were received by the Special Rapporteur.

"22. Eye-witness accounts from Papun, Pa'an and Thaton Districts are consistent in alleging that hundreds of Karen villagers were shot or beaten to death by the Tatmadaw, including children and persons over the age of 65 accused of being insurgents, many while portering, refusing to relocate, refusing to give rice, livestock or money to the army, for escaping rape or in retaliation for or in lieu of another family member or villager.

"23. The Special Rapporteur has also received allegations that similar extra-judicial executions of the Shan and Kayah ethnic groups are taking place and that extra-judicial executions of hundreds of Myanmarese Muslim porters continue.

"24. The Special Rapporteur would appreciate receiving information describing any investigations into these allegations undertaken by the Government. Please detail any steps taken internally by the military or by the civilian authorities, legal or otherwise, to prevent or curtail the occurrence of extra-judicial executions in contravention of article 3 of the Universal Declaration of Human Rights and article 3 common to the Geneva Conventions. Please indicate whether any military personnel have been tried and sentenced, dismissed from duty or otherwise sanctioned for their part in any verified violations, if the Code of Criminal Procedure provides for sanctions for these violations, what remedies it may provide for the relatives of the victims and if any such petitions have been brought and to what effect.

"E. Repatriated Muslims from Northern Arakan State

"25. It is reported that over 35,000 Myanmar Muslims have now been repatriated or returned, the most recent of these repatriations with the participation of the United Nations High Commissioner for Refugees screening for the voluntary character of the repatriations. Reports concerning the status of the repatriated persons assert that they have not been allowed to return to their villages of origin and have been forcefully resettled in villages prepared by the Government.

"26. It is further reported that their residency and/or nationality status remains unclear, that most have not received identification cards and therefore are not free to travel, enrol in learning institutions or

reportedly, in some cases, apply for jobs. It has been alleged that they are segregated from other groups and are not allowed to travel freely.

"27. Reports continue to be received of wide-scale forced recruitment of Muslims from Arakan State for portering and labour.

"28. Please comment on the above-mentioned allegations indicating in detail the sites of resettlement, what the nationality and/or residency status is of the returnees and repatriates and what rights under law are applicable to them.

"F. Labour rights

"29. In regard to International Labour Organization (ILO) Convention No. 87 on Freedom of Association and Protection of the Right to Organize of 1948, which was ratified by Myanmar in 1955, the following comments and observations made during the course of the eightieth session of the ILO Committee on the Application of Standards, held at Geneva in June 1993.

"30. A Government representative stated the position of the Government that the purpose of the National Convention for the drafting of a new constitution was to lay down the basic principles (of a new constitution) that would ensure fundamental rights, including those of workers. After the emergence of the new constitution, various laws would have to be reviewed so as to be brought into line with it. However, during the transitional period, the workers' rights were being ensured by the legislation still in force. At the same time, labour laws reflecting the democratic principles pertaining to workers had been drafted.

"31. He stated that new labour laws reflecting the principles of the Convention, to which the Government had referred in last year's report, and which replaced old ones concerning the formation of workers' organizations, had been submitted to the appropriate authorities and were now under consideration. His Government would inform ILO in due course of progress in the framing of the new Constitution and the new labour laws.

"32. The Government representative opposed the allegation that elected representatives had been imprisoned and stated that the single trade union no longer existed and that steps had been taken to adopt legislation which would take into account the principles of freedom of association. The Government representative also stated that the 'so-called trade union operating on the border areas was a creation of terrorist groups outside the territory of Myanmar and did not represent any worker in Myanmar'.

"33. The workers were of the opinion that there still was no freedom of association in the country and that there was hardly any trade union movement; trade unionists who criticized the Government were allegedly imprisoned. It was further noted that the members of Parliament freely elected in May 1990 had not been allowed to convene and that many were in prison, had been disqualified or had fled the country.

"34. It was pointed out that the extant legislation (1976), which the Government representative had cited as being in force during the transitional period, provided for a monopoly of trade union rights as well as for a monopoly of the practice of trade union activities, which represented a 'clear infringement of the Convention'. The arrest of some labour activists was pointed out, as well as the continued practice of forced labour.

"35. Please indicate what measures have been taken to comply with the obligations undertaken under ILO Convention No. 87 and explain what workers rights are protected under the present legislation and what lawful trade unions or other syndicates presently exist. Further indicate, please, if the right of five or more persons to congregate and associate freely is presently protected under law. Please indicate what measures have been taken to comply with the obligations under ILO Convention No. 29 prohibiting the practice of forced portering and other forced labour, what prohibition against forced portering or labour exists under the present law and what rights of redress are available to alleged victims of such practices. Please indicate the number of times that these procedures for redress have been resorted to and to what effect.

"G. Rights of the child

"36. In 1989, Myanmar became a party to the Convention on the Rights of the Child. At the time of its ratification, a number of understandings and reservations were deposited pertaining to article 37 thereof on the prohibition of torture, cruel, inhuman or degrading treatment in regard, inter alia, to the treatment of children during interrogation. In his report to the Commission on Human Rights at its forty-ninth session, the Special Rapporteur recommended that the Government consider withdrawing its reservations and understandings to article 15 of the Convention on the Rights of the Child regarding freedom of association and to article 37 regarding the prohibition of torture of minors. 2/

"37. Please indicate what steps have been taken in response to those recommendations.

"H. The National Convention

"38. In regard to the National Convention, it has been reported that of the 702 delegates from 8 categories of people, 49 were selected by the 10 political parties remaining after the elections, 106 were elected representatives and the remainder of the delegates from the other six categories were chosen by the State Law and Order Restoration Council (SLORC).

"39. It has been further reported that the draft principles or guidelines for discussion during the Convention were to remain within a framework of the following objectives: (a) non-disintegration of the union; (b) non-disintegration of national solidarity; (c) consolidation and perpetuity of sovereignty; (d) emergence of a genuine multi-party

democratic system; (e) development of eternal principles of justice, liberty and equality in the State; and (f) participation of the Tatmadaw in a leadership role in the national politics of the future; and that this framework for discussion was determined by SLORC and that the discussions were to remain exclusively within these guidelines. Wearing badges, distributing leaflets or disseminating propaganda were reportedly prohibited.

"40. It has been further reported that each of the eight groups represented were to have a panel of five chairmen who would lead the discussions, and that in the political parties group, only one chairman (U Tha Zan Hla) was from the National League for Democracy (NLD), the party that won the majority in the May 1990 elections. In the elected representatives group, where 89 of the remaining 105 delegates were from NLD, no NLD representatives were selected as chairmen.

"41. It has been further alleged that since the beginning of the National Convention, numerous participants have been disqualified or arrested for allegedly contravening these guidelines and particularly for having questioned the leadership role foreseen for the Tatmadaw. When the Convention reconvened in June 1993, statements were allegedly read out by Chairman Major General My Nyunt and U Aung Toe to the effect that, there should be a strong President who should be able to carry out his responsibilities 'without constraints' in working for the development of the country, and that this person should be 'an indigenous citizen who is loyal to the nation and its citizens'. Several persons have allegedly since been arrested for challenging these concepts, and some have been charged with participating in activities intending to undermine the National Convention (see paras. 1-8 above).

"42. The Special Rapporteur would appreciate information from the Government regarding these allegations, indicating what steps have been taken to comply with the results of the elections of May 1990.

## "I. Rights devolved from citizenship status

"43. Information received by the Special Rapporteur has indicated that the citizenship laws of Myanmar are unclear, vague, inconsistent, inaccessible to the public and inequitably applied. 3/ Inability to obtain nationality or not belonging to one of the many tiers of residency status applied throughout Myanmar, have allegedly excluded entire groups, particularly from the ethnic minorities, from enjoying a range of civil, political, social, cultural and economic rights and protections.

"44. Among the rights allegedly rendered inaccessible, is the right to education. The right of every citizen to education was incorporated into the 1974 Constitution. Under the 1980-1981 regulations of the Ministry of Education regarding access to university, the applicant must satisfy four requirements: being a 'Burmese National'; passing prescribed exams; having a 'good character'; and being in good health. These requirements have allegedly been used to ban students disapproved of by the authorities. Particularly cited as being singled out for such discrimination are the

ethnic Indians, Bangladeshi and Chinese, even when they, and at times even their parents, were born in Myanmar. Only those with full citizenship are reportedly allowed to prepare for certain higher professional careers, including medicine and technology. Ethnic minority students have also reportedly found it difficult or impossible, particularly without proper identification cards, to travel to the major cities to attend institutions of higher learning.

"45. The Special Rapporteur would appreciate information from the Government delineating the differences among the various nationality and residency statuses and the corresponding rights and obligations.

"J. Steps to improve the human rights situation

"46. The Special Rapporteur would appreciate receiving information regarding any steps taken by the Government to improve the situation of human rights in Myanmar since his last visit.

"K. Social, cultural and economic rights

"47. Please detail any steps taken by the Government to increase the enjoyment of the social, cultural and economic rights of the people of Myanmar including any recent economic developments which the Government may wish to bring to the attention of the Special Rapporteur."

## III. INFORMATION RECEIVED SUBSEQUENT TO THE MEMORANDUM OF ALLEGATIONS OF 30 SEPTEMBER

### A. Arrests and detentions

13. Information was received regarding the arrests of 14 persons in connection with the National Convention. The Special Rapporteur on the situation of human rights in Myanmar and the Chairman of the Working Group on Arbitrary Detention transmitted, on 12 October 1993, to the Minister of Foreign Affairs of Myanmar, the following letter regarding these arrests and the trials of some of those arrested:

"We have the honour to address you jointly in our respective capacities as Special Rapporteur on the situation of human rights in Myanmar and as Chairman-Rapporteur of the Working Group on Arbitrary Detention, appointed by the Commission on Human Rights in its resolutions 1993/73 and 1991/42 of 5 March 1991, respectively.

"In this connection, we wish to draw your attention to information we received regarding the following persons:

| | | |
|---|---|---|
| 1. | MA THI DA | NLD Member |
| 2. | U KHIN MAUNG | NLD representative from Kyu Athada |
| 3. | U KYI MYINT | NLD representative from Latha |
| 4. | U KYAW THAN | NLD representative |

| | | |
|---|---|---|
| 5. | U LWIN OO | NLD representative from Kyu Athada |
| 6. | U WIN KYI | NLD representative from the Third Kamandeen |
| 7. | NE THIN MYINT | NLD member |
| 8. | BO LAY | Student |
| 9. | THET OO | Student |
| 10. | NE WIN | Student |
| 11. | U THIN THUN | National Convention Representative |
| 12. | U HAN SIEN | National Convention Representative |
| 13. | MYU WIN | |
| 14. | THAN MYIN | |

"It has been brought to our attention that the above-mentioned persons were allegedly arrested on or about 3 September 1993 and detained at Insein Prison on charges of: (a) printing material without a permit; (b) distributing illegally printed matter; (c) committing acts against State security and, in the case of Ma Thi Da, for maintaining contacts with illegal organizations.

"It has further been reported that Ma Thi Da and Myu Win were brought to trial, the latter on 7 July 1993 where he was subsequently sentenced to a five-year term of imprisonment. The other above-cited persons are reportedly to stand trial beginning on 11 October 1993.

"Without in any manner wishing to prejudge the decision eventually to be taken by the Working Group as regards the arbitrary character or otherwise of the arrest and detention of the above-mentioned persons, we should like to appeal to your Government to do its utmost to ensure that the judicial guarantees provided for by the Myanmar Penal Code and the Code of Criminal Procedure and applicable to all persons detained for the Commission of a crime for which the punishment may be imprisonment for more than one year, and the relevant international standards, be applied to the above-mentioned persons, in particular the rights to be formally charged, to be informed of the charges being brought, to be defended by a counsel of his own choosing, to be granted a just and fair trial by a competent court and to have the right to appeal to a court in which a fair and impartial judgement may be held.

"In regard to the minimum basic international standards for judicial guarantees, we would like to recall in particular those embodied in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

"It would be most appreciated if your Government could provide us forthwith with any information concerning the legal situation of the above-mentioned persons."

14. In this regard, the following information on the laws relevant to the above-mentioned cases had been provided during the previous reporting period by the Government of Myanmar:

(a) Under section 61 of the Code of Criminal Procedure, no police officer shall detain in custody a person arrested without warrant for a period longer

than 24 hours in the absence of a special order of a magistrate under section 167;

(b) If the investigation cannot be completed within this period, and it appears there are grounds to believe that the accusation or information is well-founded, the dossier of the case and the arrested persons are to be presented to the magistrate. For offences punishable with up to seven years, the person may be held for a period of up to 15 days. For offences where the term of imprisonment may be for more than seven years, the person may be held for a period of up to 30 days;

(c) Under paragraph 1198(3) of the Myanmar Police Manual, while under detention, a person is entitled to meet with and seek advice from a lawyer and is to have access to his family.

## B. Courts and trials

15. The courts in Myanmar are constituted under the Judiciary Law of 1988. Under this law, appeals and revisions of the order and judgement of a court are permitted.

16. The administration of justice in Myanmar is based on the following principles:

(a) Administering justice independently according to law;

(b) Protecting and safeguarding the interests of the people and aiding in the restoration of law and order and peace and tranquillity;

(c) Educating the people to understand and abide by the law and cultivating in the people the habit of abiding by the law;

(d) Working within the framework of law for the settlement of cases;

(e) Dispensing justice in an open court unless otherwise prohibited by law;

(f) Guaranteeing in all cases the right to defence and the right of appeal under the law;

(g) Aiming at reforming moral character in meting out punishment to offenders.

17. After the 15- or 30-day investigatory period, a case must be sent to trial. Under section 340 of the Code of Criminal Procedure, a person has the right to engage a lawyer for his defence if he has not done so during the investigation by the police. The accused may apply for bail.

18. Cases are categorized as either summons cases or warrant cases. Summons cases are generally not of a serious nature and are punishable by a term of not more than six months. These cases are generally adjudicated within one day.

19. Warrant cases are those related to an offence punishable by death (although in December 1992, the Government commuted all death sentences to a life term), transportation (commutation) or imprisonment for a period of more than six months. The procedure for these cases is contained in Chapter XXI of the Code of Criminal Procedure. The case of the prosecution is heard first. Then the defence may be heard. There is a right to recall and cross-examine witnesses, all evidence should be taken in the defendant's presence or in some cases, when this right is dispensed with by the Code of Criminal Procedure, in the presence of the defendant's counsel. A language understood by the defendant must be used, and all proceedings must be recorded by the court. There is a right to not self-incriminate and there is no double jeopardy section (403). There is also the right to appeal.

### C. Law Safeguarding the State against the Dangers of Subversive Elements

20. The Law Safeguarding the State against the Dangers of Subversive Elements was enacted in 1975. Under this law, the Council of Ministers may pass an order as may be necessary, restricting any fundamental right of a citizen if there are reasons to believe that he has committed or is committing or is about to commit any act which infringes the sovereignty and security of the State or public peace and tranquillity. To exercise such power, the Council of Ministers has formed a Central Body consisting of the Minister for Home Affairs, the Minister for Defence and the Minister for Foreign Affairs. These policies and guidelines to be adhered to in restricting the fundamental rights of citizens are laid down in section 9 of the law.

21. The Central Body is imbued with the following powers:

(a) Arresting and detaining a person against whom action is taken for a period not exceeding 60 days at a time, for a total of up to 180 days;

(b) Restraining a person against whom action is taken for up to one year.

22. If it becomes necessary to extend the period of detention or restraint, the Central Body may be authorized by the Council of Ministers to detain or restrain a person for a period not exceeding one year at a time, for a total of up to five years. Restrictions as to movement, residence and possession of articles is permitted under this law.

### D. Repatriation of Muslims of Myanmar

23. The Special Rapporteur has been informed that through recent discussions between the Government of Myanmar and the United Nations High Commissioner for Refugees, it has been agreed, in principle, that the United Nations Office of the High Commissioner for Refugees (UNHCR) will soon be allowed to establish a presence in the Rakhine State. The purpose of the presence of UNHCR will be to assist and coordinate the voluntary repatriation and safe resettlement of the persons from Myanmar returning from the UNHCR-assisted camps in Bangladesh.

24. Other information received regarding the situation of repatriated persons includes reports that in some cases the returnees have been allowed to go back to their original villages. Other reports indicate that some of the villages, largely built of mud, disintegrated during the absence of the inhabitants, and that for this reason, they have in some cases, taken up residency in other villages. Still other reports indicate that during the absence of these persons, some of their homes and villages were appropriated by the military or others from the Rakhine State, and thus, upon their return, some of the Muslims of Myanmar were forced to take up alternative residency.

### E. Social and economic rights

25. The Special Rapporteur has been informed that all schools and institutions of higher learning have now been reopened and have remained open throughout the normal term.

## IV. RESPONSE BY THE GOVERNMENT OF MYANMAR TO THE MEMORANDUM OF THE SPECIAL RAPPORTEUR

26. By a note verbale dated 17 October 1993, the following response was received from the Government of Myanmar to the memorandum of allegations of the Special Rapporteur:

"A. Arbitrary detention

"Reference to paragraph 2

"1. Legal Action was taken against U Aung Myint, aged 57, Daw Khin Mar Aye, aged 53, and Htay Myint (alias) Khin Soe, aged 37, for distribution of seditious leaflets which could be detrimental to the security of the Union and maintenance of public law and order in accordance with section 5(i) of the 1950 Emergency Provisions Act.

"Reference to paragraphs 3 and 4

"2. Legal Action was taken against the following persons:

(a) Dr. Aung Khim Sint

(b) U Than Min

(c) Ma Thi Da

(d) Nay Tin Myint

(e) Bo Lay

(f) Thet Oo

(g) Tin Htun

(h) Khin Maung

(i) Kyaw Than

(j) Kyi Myint

(k) Than Myint

"for infringing the existing laws. Each person has been charged and is being prosecuted in the Yangon Division Law Court presided over by two Divisional Judges.

"3. In the Union of Myanmar, arrest or detention of a person is made in accordance with the provisions contained in the Criminal Procedure Code enacted in 1898. The person concerned is formally charged and defended by a Legal Counsel; and a fair trial is conducted by a competent court. He has the right to appeal. The details concerning arrest or detention and trial of cases are appended herewith.

"4. The following are the detailed charges against the persons mentioned in the summary of allegations received:

| | Name of defendant | Charges |
|---|---|---|
| (a) | Khin Maung (alias) Nyi Nyi | Unlawful Association Act 17 (1) |
| (b) | Than Min (alias) Tin Tun Aung | Charges against 11 persons - (a) to (k) - are Unlawful Act 17 (1) - distribution and dissemination during 1993 in Yangon Division of literature |
| (c) | Thet Oo | and leaflets issued by terrorist groups. |
| (d) | Ko Lay (alias) Aung Naing Oo | 1950 Emergency Provisions Act 5 (i) |
| (e) | Nay Win (alias) Nay Tin Myint | Action which could be detrimental to the security of the Union, and maintenance of public law and order: distribution and dissemination of |
| (f) | Lwin Oo | literature and leaflets. |
| (g) | Kyaw Than | Section 17/20 of Registration of Printers and Publishers Law |
| (h) | Ma Thida | |
| (i) | Han Sein | Infringement of this law for illegal action mentioned above. |
| (j) | Kyi Myint | |
| (k) | Tin Tun (alias) Rashid | |

| | Name of defendant | Charges |
|---|---|---|
| (a) | Dr. Aung Khin Sint | 1950 Emergency Provisions Act 5 (i) |
| (b) | U Than Min (alias) Tin Tun Aung | Both were found to have instigated the delegates attending the National Convention by surreptitious means to cause disruption and disorder among the delegates. Both of them distributed leaflets in May 1993 fraudulently under the name of "monks and laity".<br><br>Section 17/20 of Registration of Printers and Publishers Law<br><br>The infringement of this Law for illegal action mentioned above, including letters of threat to the delegates. |
| (a) | Dr. Aung Khin Sint | The Burma Official Secret Act. Section 5 (1) (4)<br><br>He infringed the above Law by making use of an official document in committing the above-mentioned illegal acts. |

"B. Matters concerning arrests or detention and trial of cases

[The Government of Myanmar also included in its report an explanation of the pertinent laws regarding arrests or detention and trial of cases. These laws have been summarized in paras. 14 to 22 above.]

"C. Disappearance

"5. Allegations stating that during the mass demonstrations of 1988 and December 1991, hundreds of persons including students, monks, workers, writers, professors and others were arrested or shot to death and that the whereabouts of many of these have never been established; that many remain in unacknowledged detention and that others have been buried in mass graves reported to be located in an army base near the airport and in the new Hlaingthaya Township are totally false and unfounded.

"6. Under the existing laws, organizations empowered to arrest any person who has committed an offence maintain a register of persons arrested by them in accordance with the law, and reports have to be submitted to the relevant authorities concerning such arrests.

"7. Under the existing laws of Myanmar, no one can be arrested and detained if it is not in accordance with the law. It is provided in section 61 of the Code of Criminal Procedure that no police officer shall detain in custody a person arrested, for a period exceeding 24 hours. Where it is necessary to detain such an accused for more than 24 hours, a special order of a Magistrate has to be obtained under section 167 of the Code of Criminal Procedure. If an arrest which is not in accordance with the law is made, the person making the arrest is liable to be punished under sections 341 to 348 of the Penal Code.

"8. In the case of the death of any person, it is mandatory to state the cause of death on the death certificate. In cases where the cause of death is not yet known, the police has to forward a report of the case to a magistrate under section 174 of the Code of Criminal Procedure, and the magistrates are empowered to hold inquests under section 176 of the Code of Criminal Procedure to make known the cause of death.

"D. Summary or arbitrary executions

"9. All the allegations stated under this heading are totally false and unfounded. While undertaking our three main causes, which are non-disintegration of the union, unity and solidarity of the national races and perpetuity of sovereignty, the Tatmadaw has never, at any time committed such atrocities nor will it ever do so in future. There have been numerous cases running into thousands where the Tatmadaw, even in skirmishes with the insurgents, have treated captured persons very well and then handed them over to the police for prosecution for the offences committed. Atrocities such as demanding rice, livestock or money from villagers, rape of rural women, forced conscription and mass execution of villagers are being committed only by the insurgents time and again. It is believed that these allegations are based upon false information given by the insurgents, persons communicating with insurgents and persons who are endeavouring to bring down the government of the State Law and Order Restoration Council.

"E. Repatriated Muslims from Northern Arakan State

"10. In pursuance of the agreement reached between the Union of Myanmar and the People's Republic of Bangladesh, repatriation of the Myanmar residents in Bangladesh started on 22 September 1992. For the facilitation of systematic and orderly repatriation, five reception centres, namely, Taungbro, Ngakhura, Pyinphyu, Kanyinchaung and Magyichaung, were established on the Myanmar side on 15 May 1992. Since 22 September 1992, a total of 9,209 households and 41,098 persons, comprising 20,103 males and 20,995 females, were repatriated as at 12 October 1993.

"11. The returnees were resettled in their original villages. They were not sent to other places and were not resettled to the regions other than their own villages or origin. At present, for the development of the country, priority is being given to the development of border areas and national races. In implementing the development programmes, the people in

the border areas contributed their voluntary labour of their own accord. It is the custom and culture of indigenous races of Myanmar to give voluntary services in nation-building works.

"12. The State had spent 100 million kyats for the development of border areas and national races in the Buthidaung and Maungdaw regions in Rakhine State. The Muslims in Rakhine State give voluntary services of their own accord to the development of border areas. They were neither forced to serve as porters nor hard labourers. Therefore there are no grounds whatsoever for those complaints. The voluntary services given by the people in the regions were stopped in 1991. After that, delegations of the United Nations, UNHCR and Bangladesh visited the villages of the returnees for first-hand knowledge of the situation.

"13. Without legal permission, no one is allowed to cross the borderline. The Muslims in Rakhine State had crossed the borderline without legal permission.

"F. Labour rights

"14. With regard to the comments and observations made during the course of the 80th Session of the International Labour Conference in the Committee on the Application of Standards held at Geneva in June 1993, the following is a reply to those comments in a question and answer form:

"Q. There continues to be no freedom of association in the country or hardly any trade union movement.

"A. The Government is in no way whatsoever exercising prohibition or restriction in this matter. No restrictive legislation has been promulgated. Many associations are operating such as medical doctors and nurses associations, arts and crafts associations, artists and artistes associations, reporters and journalists associations and the like.

"Q. Trade unionists who criticized the Government were allegedly imprisoned. Members of Parliament freely elected in May 1990 had not been allowed to convene, many were in prison, had been disqualified or had fled the country.

"A. Those who are imprisoned are the people who had committed crimes, not the trade unionists. The allegation does not bear any iota of truth. Only those who had committed crimes were sent to prison, and the criminals and those who breached the law fled to the country so as to escape the legal proceedings and punishment.

"15. As regards the accusation of 'a clear infringement of the Convention', the Government of the Union of Myanmar had already reported and stated at several ILO sessions since 1989 that 'with the abolition of the one-party political system, the Unitary Workers' Organization no longer exists and that the said 1976 legislation organizing the single trade union system has automatically become obsolete'. How can extinct legislation

infringe the provisions of the Convention when there is no longer a monopoly of trade union rights and the practice of such activities in a country? Hence, no infringement of the Convention. The Trade Union Act of 1926 is still in existence, and since it has become old, new legislation has been drafted and submitted to the concerned authority for vetting and scrutiny. A new Trade Union Act will come into being in the not too distant future.

"Q. Please indicate:

(a) What measures have been taken to comply with the obligations undertaken under ILO Convention No. 87;

(b) What workers rights are protected under present legislation;

(c) What lawful trade unions or other syndicates presently exist.

"A. (a) The reply to (a) is in the last paragraph (see para. 15 above)

(b) and (c) Workers are enjoying many rights, such as social security, under the Social Security Act, 1954; compensation, under the Workmen's Compensation Act, 1923; leave and holidays, under the Leave and Holidays Act, 1951; welfare, health and safety under the Factories Act, 1951; and other rights under present, existing labour legislation.

"G. Forced portering and forced labour

"16. Concerning the allegation of the continued use of forced portering and forced labour, a brief explanation is required. The International Confederation of Free Trade Unions (ICFTU) had made a representation under article 24 of the ILO Constitution, alleging non-observance of the Forced Labour Convention No. 29, 1930. The Governing Body of ILO considered receivability and the representation was set up, comprising Ms. L. Caron (Government member, Canada), Mr. B. Noakes (Employer member, Australia) and Mr. P. S. Sundaram (worker member, Sri Lanka). On 4 March 1993, the said Committee asked to supply observations on the representation and a statement of observations had been presented to the Committee. The Myanmar delegation to ILO had personally appeared before the Committee in June 1993 and presented a rebuttal. But the Committee further requested detailed information on the matter.

"17. In compliance with the request of the Committee, a detailed report has been prepared after fielding the three independent observation teams to the areas mentioned in the ICFTU allegation to find out the truth of the matter. The areas visited by the independent observation teams were:

"(a) Ok Ta Da Village in Mon State (traced in Paung Township);

"(b) Moe Kaung Village in Mon State (traced in Thaton Township);

"(c) Thein Yazat Village in Mon State (traced in Kyaikto Township);

"(d) Pyu Township in Bago (Pegu) Division;

"(e) Hline Bwe Township, Kayin (Karen) State.

"18. The findings of or the testimonies obtained by the three observation teams revealed that what have been alleged proved to be no better than the preconceived fabrication of false accounts intended to invite misconception and misunderstanding. A detailed statement to that effect is to be presented to the above-mentioned Committee of ILO very soon.

## "H. Rights of the child

"19. In acceding to the Convention on the Rights of the Child in July 1991 the Union of Myanmar had made reservations relating to articles 15 and 37 of the Convention. Arrangements are being made by the Myanmar authorities concerned to withdraw the reservations made on these two articles.

## "I. The National Convention

"20. In its Declaration No. 11/92 of 24 April 1992, the State Law and Order Restoration Council declared that it would convene a National Convention within six months and that it would meet within two months with the leaders of representatives-elect of the political parties and independent representatives-elect.

"21. A 15-member Steering Committee was formed on 28 May 1992 to coordinate with the representatives-elect concerning the convening of a National Convention.

"22. In accordance with Order No. 9/92 of 28 May 1992, the following political parties and an independent representative-elect were represented at the Coordinating Meeting, held from 23 June to 10 July 1992:

| | Name of party | Number of representatives |
|---|---|---|
| (a) | National League for Democracy | 15 |
| (b) | Shan Nationalities League for Democracy | 6 |
| (c) | National Unity Party | 3 |
| (d) | Union Poah Nation Organisation | 1 |
| (e) | Mro (or) Khami National Solidarity Organisation | 1 |
| (f) | Shan State Kokang Democratic Party | 1 |
| (g) | Lahu National Development Party | 1 |
| (h) | Independent Representative | 1 |

"Selection of National Convention Delegates

"23. At the Coordinating Meeting it was decided that delegates attending the National Convention should be classified under eight categories of representatives. They are:

| Categories | Number of persons |
|---|---|
| 1. Representatives from political parties | 49 |
| 2. Representatives-elect | 107 |
| 3. Representatives of national racial groups | 215 |
| 4. Representatives of peasants | 93 |
| 5. Representatives of workers | 48 |
| 6. Representatives of the intelligentsia and Technocrats | 41 |
| 7. Representatives of State Service Personnel | 92 |
| 8. Other invited personages | 57 |
| | 702 |

"Categories 3 to 5: representatives of national races, peasants and workers

"24. In nominating delegates under categories 3 to 5 to represent the national races, peasants and workers, selection committees comprising 15 members each for State/Division, District and Township levels were formed. Each committee was chaired by a Governmental General Administrative Officer and other members were from the administrative departments concerned and had an intimate knowledge of national racial groups, peasants and workers, as well as local personages who had earned the respect and trust of the national racial groups, peasants and workers.

"Category 6: representatives of the intelligentsia and technocrats

"25. In nominating delegates to represent the intellectuals and the intelligentsia, selection committees composed of senior administrative officials, academicians and intellectuals were formed.

"Category 7: representatives of State Service personnel

"26. In nominating delegates to represent the State Service personnel, selection bodies were formed at various Government ministries and departments to select the delegates.

"Category 8: other invited personages

"27. Of the 57 personages invited to attend the National Convention, 38 were representatives from 8 special regions of 8 armed groups who have returned to the legal fold to join hands with the Government in carrying out the border area development programmes being implemented by the Government.

"28. The remaining 19 invitees were personages who are well known for their political, economic, social and administrative experience.

"29. From the foregoing it is apparent that the delegates under categories 3 to 8 were not, repeat not, chosen by the State Law and Order Restoration Council.

"Selection of the panel of chairmen

"30. At the National Convention it was decided after due consultation that each category would nominate five delegates to act as Chairmen in the deliberations. Since there were eight categories, 40 delegates were nominated to serve on the panel of chairmen. Accordingly, delegates under category 1 (representatives from political parties) and delegates under category 2 (representatives-elect) were entitled to be represented by 10 delegates as Chairmen on the Panel. As a large majority of the delegates under category 1 and category 2 represented the political parties, and with a view to maintaining and nurturing unity and amity among the 10 political parties, it was decided that each political party should nominate a delegate to serve on the Panel of Chairmen. Hence, each of the 10 political parties was able to nominate a delegate on the Panel. Accordingly, U Tha Zan Hla of the National League for Democracy is one of the Chairmen on the Panel to represent his own party.

"Objectives of the National Convention

"31. The purpose of convening the National Convention is to lay down the basic principles for the elaboration of a new and enduring democratic State Constitution. As such, there is no place for playing party politics or for party propaganda, as those can be detrimental to the unity prevailing among the delegates and, above all, it can defeat and jeopardize the objectives of the National Convention.

"32. The principles of non-disintegration of the Union, national solidarity, national sovereignty, establishment of a multi-party democratic system and the universal values of justice, liberty and equality are universally accepted general principles. And the Tatmadaw has played a crucial role throughout Myanmar's contemporary history. In the struggle for independence the Tatmadaw fought hand-in-hand together with the people, a struggle in which many indigenous Myanmar national races participated. Born out of national struggle for national independence some 50 years ago, the Tatmadaw follows the tradition of serving the people's interests loyally and faithfully. The Tatmadaw has played an important role not only in the struggle for national independence but also in preventing the Union from disintegrating in times of crises and in safeguarding national sovereignty and integrity. In 1948 and 1949, in 1958, 1962 and 1988 the Tatmadaw was called upon to shoulder national responsibilities to protect and safeguard the nation. As it represents the single disciplined organization in the nation, it is incumbent upon it to play a leading role in national politics. It is therefore only natural that in the transformation of one system to another the Tatmadaw should also take part in the political process of the country. Its participation in this process is in consonance with the national aspirations of the people.

"Badges, distribution of leaflets etc.

"33. There were no restrictions whatsoever with regard to wearing badges. In fact, various delegates representing various political parties wore their badges. Also, there were no restrictions regarding distribution of leaflets and dissemination of propaganda which did not go beyond the framework of the six objectives.

"Alleged disqualification or arrest of some delegates

"34. The sweeping allegations that numerous participants were disqualified or arrested for various reasons are totally false. Out of all the delegates attending the National Convention, action was taken against the following five delegates:

"(a) The names of U Aung Htoo and Dr. Aung Khin Sint of the National League for Democracy were struck from the list of delegates representing the National League for Democracy. This action was carried out at the request of the National League for Democracy itself;

"(b) Legal action was taken against U Maung Maung, who represented one of the national racial groups, for infringement of existing laws;

"(c) A representative from Pekhon constituency was disqualified as he became involved in and joined a terrorist group;

"(d) The name of U Maung Ngwe of the Union Paoh National Organization was struck from the list of delegates as he passed away on 25 April 1993.

"J. Rights devolved from citizenship status

"35. The weakness of the Union Citizenship Act (1948), enacted after Myanmar gained independence, became evident with the passage of time. Thus, the Union Citizenship Act (1948) was revoked and the Myanmar Citizenship Law was promulgated on 15 October 1982. Under the new Myanmar Citizenship Law, there are three categories of citizen, namely, citizen, associate citizen and naturalized citizen. The rights to be enjoyed by those citizens and the punishment if citizenship is acquired through unlawful means, the decision-making body, the right to appeal, the right of defence against action taken and the right to clarify in case of doubt in the citizenship are clearly mentioned in the Law section-by-section. Thus, the complaints made about the Myanmar Citizenship Law are not valid.

"36. A total of 82,541 foreigners were granted citizenship under the Union Citizenship Act (1948). Under the new law, 19,290 associate citizenships and 1,245 naturalized citizenships were granted to a total of 20,535 foreigners. The remaining cases are under scrutiny for further processing.

"37. The right to study for basic education at the primary, middle and high school levels is given, even to foreigners. The citizens and the foreigners residing permanently in Myanmar-Naing-Ngan have the right to study for higher education. The right to study for professional lines at

institutes of medicine, technology, etc. is given only to those whose parents are citizens and who themselves are citizens, as is the case in other countries. Every citizen can work for his or her livelihood and enjoys benefits without any discrimination. Every citizen is free to travel to any place in the country, however, it is necessary for him or her to carry a citizen identity card, issued by the authorities, while travelling."

## V. PRELIMINARY OBSERVATIONS

27. The Special Rapporteur welcomes the cooperation of the Government of Myanmar in responding to the memorandum of allegations and in agreeing to the visit of the Special Rapporteur from 9 to 16 November 1993, and expresses the hope that he will be accorded free and confidential access to all persons he deems useful in carrying out his mandate.

28. In regard to arrests and detentions, the Special Rapporteur has noted that over 1,000 persons detained during the mass demonstrations of 1988 and 1990 have now been released; however, arrests of many persons attempting to voice political dissent have been reported in 1993.

29. Although martial law was lifted in December 1992, the persons cited (see para. 13 above) were all arrested in 1993 in Yangon under still existing emergency decrees, such as the Unlawful Association Act 17 (1), the 1950 Emergency Provisions regarding acts detrimental to the security of the Union, section 17/20 of the Registration of Printers and Publishers Law and sections 5 (1) and (4) of the Burma Official Secret Act. They have been tried in civilian courts, but for offences under these emergency laws.

30. The legal causes of action against these persons (based on existing emergency legislation and SLORC decrees) appear to have arisen from their publication or circulation of documents pertaining to the process of the National Convention or for their criticism of the National Convention. However, the Special Rapporteur has not been informed what the specific acts are which constitute the crimes.

31. The above-mentioned existing laws place severe restrictions on freedom of expression, prohibit assembly of more than five persons in any one place, prohibit all criticism of the State Law and Order Restoration Council, the army (Tatmadaw) and the proceedings and content of the National Convention.

32. Further information provided to the Special Rapporteur concerning the trials of these and other persons, indicates that legal counsel was put at the disposal of the defendants. It is not clear how counsel was chosen, what the affiliation was of the lawyers provided or what role the lawyers had been permitted to carry out before, during or after the trials. It was further reported that the trials that had taken place had not been open, as is normally prescribed by law.

33. The Special Rapporteur has been informed that the persons tried at Insein Prison on 11 October 1993 have been sentenced to 20 years of imprisonment. Among these is Aung Khin Sint, National League for Democracy elected-member of

Parliament and representative to the National Convention. His assistant, Than Min, was also arrested and tried for circulating illegal documents "issued by terrorist groups", in which delegates were asked to recall their responsibilities. He has reportedly been sentenced to 20 plus 18 additional years of imprisonment. It is not known whether appeals to a higher court have been or will be permitted in these cases.

34. The Special Rapporteur requests the Government of Myanmar to allow an international presence at any possible future trials concerning the persons cited above or of others tried under the emergency decrees. The Special Rapporteur urges the Government of Myanmar to release Daw Aung San Suu Kyi and to ensure that there are no threats or acts of intimidation or reprisal towards her.

35. In regard to torture and cruel, inhuman or degrading treatment, the Special Rapporteur received numerous allegations that this practice has continued to occur in the Union of Myanmar. It arises in a number of contexts. During interrogation, the practice is said to be routine and takes the form of poor sanitary conditions, being shackled, beatings, sleep, food and water deprivation, electric shock, the use of falanga, near suffocation, and psychological torture, including threats of death to the individual and his family. During forced portering and forced labour, the practice includes beating, kicking, burning, whipping, sleep, food and water deprivation, denial of medical treatment, carrying heavy loads in rugged terrain and in extreme temperatures. The repeated rape of women has been alleged. In some cases it has reportedly been carried out as a method of reprisal. During forced relocations in the context of military operations, similar forms of torture have been reported.

36. Numerous cases of disappearances alleged to have occurred in 1988 and in December 1991, reportedly remain unclarified. It is alleged that the whereabouts of hundreds of persons, including monks, workers, writers, professors and others, have never been established, and it is believed that some remain in unacknowledged detention, while others may have been killed and buried in mass graves. The Government has not indicated whether legal or administrative procedures for the purpose of clarification, such as habeas corpus petitions, are available to the relatives of the missing persons, and if available, how many times in the last year these remedial procedures have been used and to what effect. Disappearances have most frequently occurred since the last visit to the Union of Myanmar by the Special Rapporteur, in the context of recruitment for forced labour and forced portering.

37. The Government has stated that under the existing laws disappearances cannot occur because all detentions and arrests must be carried out in accordance with the law, which requires a register of all detainees to be kept and submitted to the relevant authorities.

38. As stated in his report to the Commission on Human Rights at its forty-ninth session, the Special Rapporteur took note of the fact that all death sentences had been commuted to life imprisonment. Nevertheless, reports continue to be received of extrajudicial executions carried out by the army (Tatmadaw) in the context of forced portering and labour, and carried out most frequently against ethnic minorities. The reports focused on executions of

civilians accused of insurgency, of those refusing to be recruited for portering or other labour, or killed in reprisal for others refusing recruitment or, in some cases, for another village refusing relocation.

39. The Government reply in regard to extrajudicial executions indicates that it is mandatory to state the cause of death on the death certificate. If the cause of death is not known, the police are required to forward a report to a magistrate, who has the discretionary power to hold inquests into the cause of death.

40. The Government stated that all allegations regarding summary or arbitrary executions were totally false and unfounded and that while undertaking the three main causes: non-disintegration of the Union, unity and solidarity of the national races and perpetuity of sovereignty, the Tatmadaw, "has never, at any time committed such atrocities nor will it ever do so in the future". The Government stated its belief that these allegations "are based upon false information given by insurgents, persons communicating with insurgents and persons who are endeavouring to bring down the Government of the State Law and Order Restoration Council".

41. Over 35,000 Myanmar Muslims who had fled to Bangladesh from Northern Rakhine State have now returned or repatriated. The repatriations took place with the participation of the Office of the United Nations High Commissioner for Refugees (UNHCR). The Special Rapporteur has received numerous and varied reports concerning the conditions of resettlement. Some reports have indicated that they have not been allowed to return to their villages of origin and have been resettled in villages set up by the Government. Other reports indicate that many of the villages of origin were appropriated by military personnel and/or by Burmese civilians. Still other reports state that they have been allowed to return to their original villages but that in some cases, the homes (constructed mostly of mud), had fallen apart during their prolonged absence.

42. The residency and citizenship status of the returnees remain unclear, and most have not received identification cards. The Special Rapporteur was told that they were not entitled to freedom of movement, to enrol in institutions of higher learning or to take up certain professions.

43. The Government replied that they had been resettled in their original villages and that "priority is being given to development of border areas and national races". Since 22 September 1992, a total of 9,209 households and 41,098 persons had been repatriated as at 12 October 1993.

44. The Special Rapporteur is pleased to note that through recent discussions between the Government of Myanmar and the UNHCR, it has been agreed, in principle, that UNHCR will soon be allowed to establish a presence in the Rakhine State. The purpose of the presence of UNHCR will be to assist and coordinate the voluntary repatriation and safe resettlement of the persons of Myanmar returning from the UNHCR assisted camps in Bangladesh.

45. It has been reported to the Special Rapporteur that there has been no progress made in allowing freedom of association or trade union activity and that a monopoly of trade union rights, as well as trade union activities, still

exists. The arrest of some labour activists was reported to the Special Rapporteur, as was the continued practice of forced labour.

46. The Government responded that the people in the border areas contribute their voluntary labour and that it is the custom and culture of indigenous races of Myanmar to give voluntary services in nation-building works. In regard to Muslims in Rakhine State, the Government stated that "they give voluntary services to the development of border areas" and that "such voluntary service was stopped in 1991".

47. In regard to the Convention on the Rights of the Child and to reservations made by the Government relating to articles 15 and 37 of the Convention, the Government stated that arrangements are being made by the Myanmar authorities to withdraw the reservations on these two articles.

48. The Special Rapporteur has been informed that schools and universities were re-opened for the normal school term.

49. In regard to the National Convention for the drafting of a new constitution, no evident progress has been made towards turning over power to the freely elected civilian Government. The fifteen-member Steering Committee set out the agenda, the terms of reference and the topics to be discussed. Each of the eight categories represented at the Convention elected 5 delegates (total of 40 delegates) to be on the Panel of Chairmen to direct the Convention. Out of the ten nominees allowed the political parties and representatives-elect, one member of the National League for Democracy, the party that won 80 per cent of the vote in the national elections, has been named as a Chairman.

50. The Government stated that in the National Convention, there was no place for party politics or propaganda as those could be detrimental to unity and could defeat and jeopardize the objectives of the National Convention. Persons voicing dissent in regard to the National Convention have been arrested and sentenced to long prison terms.

51. The Government has stated that because the Tatmadaw had, inter alia, prevented the Union from disintegrating and had safeguarded national sovereignty and integrity, and as it represented the single disciplined organization in the nation, it was incumbent upon it to play a leading role in national politics and that "(I)n the transformation of one system to another the Tatmadaw should also take part in the political process of the country".

52. The Special Rapporteur plans to visit the Union of Myanmar from 9 to 16 November 1993 and Thailand from 16 to 20 November 1993, at which time he will have the opportunity to examine further these issues related to the situation of human rights in Myanmar.

## Notes

1/ See E/CN.4/1993/37, paras. 69 and 70.

2/ Ibid., para. 242 (c).

3/ Ibid., para. 226.

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# HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

## Internally displaced persons

## Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report prepared by the representative of the Secretary-General on internally displaced persons, Mr. Francis Deng (Sudan), in accordance with paragraph 9 of Commission on Human Rights resolution 1993/95 of 11 March 1993 and Economic and Social Council decision 1993/285 of 28 July 1993.

ANNEX

Report prepared by the representative of the Secretary-General on internally displaced persons, Mr. Francis Deng, in accordance with paragraph 9 of Commission on Human Rights resolution 1993/95 of 11 March 1993 and Economic and Social Council decision 1993/285 of 28 July 1993

## I. INTRODUCTION

1. The appointment of the representative of the Secretary-General on internally displaced persons in July 1992 at the request of the Commission on Human Rights was a significant step in addressing the human rights dimension of the problem of internal displacement, which has drawn increased attention from the international community in recent years. The present report briefly covers the process leading to that step, the activities in which the representative of the Secretary-General has engaged since his appointment and those he plans to carry out over the next phase of his mandate.

2. The Economic and Social Council, in its resolution 1990/78 of 27 July 1990, requested the Secretary-General to initiate a United Nations system-wide review to assess the experience and capacity of various organizations in the coordination of assistance to all refugees, displaced persons and returnees and, on the basis of such a review, to recommend ways of maximizing cooperation and coordination among the various organizations of the United Nations system in order to ensure an effective response to the problems of refugees, displaced persons and returnees.

3. The Commission on Human Rights, in its resolution 1991/25 of 5 March 1991, requested the Secretary-General to take into account the protection of human rights and the needs of internally displaced persons in the system-wide review and to submit to the Commission at its forty-eighth session an analytical report on internally displaced persons, based on information submitted by Governments, the specialized agencies, relevant United Nations organs, regional and intergovernmental organizations, the International Committee of the Red Cross (ICRC) and other non-governmental organizations.

4. After considering the analytical report of the Secretary-General on internally displaced persons, the Commission on Human Rights, at its forty-eighth session, in 1992, requested the Secretary-General to designate a representative to seek again views and information from all Governments on the human rights issues related to internally displaced persons and to submit a comprehensive study to the Commission at its forty-ninth session (resolution 1992/73 of 5 March 1992). That request was approved by Economic and Social Council decision 1992/243 of 20 July 1992.

5. Accordingly, the Secretary-General appointed Mr. Francis Deng (Sudan) as his representative on internally displaced persons and entrusted him with the preparation of the comprehensive study. The representative sent a questionnaire to all Governments, organizations and agencies specified in the Commission on Human Rights resolution, requesting information on the pertinent themes of the stipulated study, drawing attention to the analytical report and to a number of

specific issues. He also held consultations with the Secretary-General and senior United Nations officials, representatives of various permanent missions to the United Nations Office at Geneva, representatives of the United Nations High Commissioner for Human Rights (UNHCR), the International Organization for Migration (IOM) and ICRC and a number of other non-governmental organizations and academic institutions. To give a practical dimension to the study, the representative of the Secretary-General undertook on-site visits to a select number of countries where internal displacement was or threatened to become particularly pronounced.

6. The Commission on Human Rights, at its forty-ninth session, considered the comprehensive study of the representative of the Secretary-General (E/CN.4/1993/35) and adopted resolution 1993/95 of 11 March 1993, in which it requested the Secretary-General to mandate his representative on internally displaced persons for a period of two years to continue his work aimed at a better understanding of the general problems faced by internally displaced persons and their possible long-term solutions, with a view to identifying, where required, ways and means of improving protection for and assistance to internally displaced persons. The Commission also requested the representative of the Secretary-General to submit annual reports on his activities to the Commission and to the General Assembly (para. 9).

7. In its resolution 1993/95, the Commission encouraged the representative of the Secretary-General to cooperate and coordinate with the Department of Humanitarian Affairs of the Secretariat, UNHCR and ICRC, and called upon those agencies and other intergovernmental and non-governmental organizations to continue to cooperate with the representative and to assist him in his tasks (paras. 5 and 7).

8. The Commission on Human Rights also called upon all Governments to continue to facilitate the tasks and activities of the representative, including, where appropriate, through extending invitations for country visits (para. 8).

9. In its decision 1993/285 of 28 July 1993, the Economic and Social Council approved resolution 1993/95 of the Commission on Human Rights.

## II. PROGRAMME OF ACTIVITIES

10. The representative of the Secretary-General is planning to engage in a continuing research project and policy analysis, the essence of which will be the quest for international protection and assistance for the internally displaced.

11. In thematic terms the project would cover several areas: it would review the global picture, dimensions and magnitude of the crisis of internal displacement; it would delineate the scope of internal displacement, utilizing causes and consequences as determinants; and it would use the paradigm of internal armed conflict as a focal premise for analysing cause and effect. In that connection, it has been observed that internal conflicts often reflect a crisis of national identity, generating cleavages between the Government or controlling authority and the affected community or population. It is the vacuum of responsibility created by that cleavage which makes the role of the

international community indispensable. However, the normative principles and the institutional and other enforcement mechanisms behind the required international action, currently underdeveloped and inadequate, need to be analysed and effectively adapted to the needs of the post-cold-war global context.

12. One of the tasks of the project will be the compilation of country profiles based both on available sources and field visits, and a survey of the actual situation inside the affected countries through a sample selected with a balance of geographical distribution. The country profiles would present the current situation of displacement (statistical evidence and basic needs), analysis of the causes of displacement, the major identity groups involved, the historical process by which those identities evolved, the specific issues in the conflict, the prevailing constitutional arrangements, pertinent legislation and political dynamics on those issues, the presence or absence of the international community, its effect in providing protection and assistance, and any shortcomings that would need to be remedied. The objective of the country profiles will be to understand more fully the issues related to internal displacement.

13. Another task to be accomplished would be an assessment of the present situation with respect to existing international law to determine the degree to which it provides an adequate basis for the protection of and assistance to the internally displaced, and for their return to their homes and home areas, whether there are gaps that would need to be filled and what specific legal reforms are required to do that.

14. The study will also require reviewing and evaluating the existing international institutions, their mandates and operations, the extent to which they provide comprehensive coverage for the needs of the internally displaced, whether there are gaps to be filled and what specific reforms might be introduced to provide needed institutional remedies.

15. Finally, a plan for action would emanate from an overall normative and operational evaluation of the current legal and institutional situation, which will include developing and proposing a strategy for international humanitarian human rights action. It would aim at evaluating more closely the challenge posed by the extreme suffering of masses of innocent civilians, the inability or unwillingness of the Governments concerned to provide protection and assistance or accept international cooperation to do so and the need to address in a practical way the issue of sovereignty under exceptional circumstances of compelling humanitarian tragedies where it constitutes an obstacle to urgently needed international protection and assistance.

## III. IMPLEMENTATION OF THE PROGRAMME OF ACTIVITIES

16. Since the extension of his mandate, the representative has undertaken a number of activities in the implementation of his programme. He travelled to Geneva in June and August 1993 for consultations with the agencies mentioned in Commission on Human Rights resolution 1993/95, namely, UNHCR, the Department of Humanitarian Affairs, IOM and ICRC, and with other non-governmental organizations. He also had coordination meetings with the Centre for Human

Rights and met with the special rapporteur on population transfers of the Subcommission on Elimination of Discrimination and Protection of Minorities, Mr. A. S. Al-Khasawneh.

17. Apart from the consultations he has held at Geneva with the specialized agencies, the representative has been in continuous communication with the United Nations High Commissioner for Refugees, in an attempt to draw on the experience of UNHCR with internally displaced persons and its expertise with issues relating to refugeehood and displacement. He has also been in continuous contact with the Department of Humanitarian Affairs, in an effort to coordinate his activities with and contribute to the work of the Department's working group on internally displaced persons, the members of which represent all the agencies providing assistance to internally displaced persons. In that regard, it is agreed that the participation of the representative in the relevant task force is essential, and he has accordingly been invited by the Department to attend the meetings of the task force on the internally displaced.

18. With regard to the country profiles, the representative intends to visit countries in Asia, Latin America and Africa, where he has not yet been.

19. By letter dated 2 July 1993, the representative expressed to the Government of Sri Lanka his intention to visit that country in order to study the problem of internal displacement in all the aspects mentioned in Commission on Human Rights resolution 1993/95. By letter dated 29 September 1993, the Government invited the representative for a visit on mutually convenient dates as from around 15 October 1993; the representative plans to undertake his mission from 10 November 1993 for a period of eight days.

20. By letters dated 1 and 4 October 1993, the representative has also initiated consultations with the Governments of Colombia and Rwanda respectively, with a view to undertaking similar in situ visits, and he is hoping to travel to both countries before the next session of the Commission on Human Rights.

21. The representative has also contacted a number of academic institutions and policy non-governmental organizations in order to enlist their contributions in the legal and institutional aspects mentioned above in the programme of activities.

22. It is important to note that the mandate of the representative of the Secretary-General calls for a complex, comprehensive and challenging programme of activities, which will require commensurate human and financial resources. Unfortunately the Centre has so far not been in the financial position to make available more than limited short-term assistance. In order for the representative of the Secretary-General to continue implementing his programme of activities in a meaningful and productive manner, support for his mandate will have to be provided at a much more substantial level and on a more stable basis. The collaboration not only of the staff of the Centre for Human Rights, but also of scholars in concerned academic and research institutions and of others who can help provide different regional perspectives on the global dimension of the problem and the required approaches would be highly desirable.

23. Finally, given the acuteness of the crisis and the urgent need for remedies, it is to be hoped that the international community will soon see fit to developing appropriate normative principles and institutional arrangements for an effective response to the serious problem confronting the rapidly increasing numbers of internally displaced persons world wide. It would be tragically ironic if the international community were to see in the appointment of the representative of the Secretary-General a ground for complacency.

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